

1-17-73

00890

TO: ALL DEPARTMENT HEADS  
SUBJECT: DISPOSAL OF FLAMMABLE LIQUIDS



Apparently, there is not a uniform-safe method used to dispose of used flammable liquids such as, Naptha, Ketone, and Lacquer thinner. In fact, there have been reports of some alarming practices of pouring down drains, into toilets, and even into trash barrels.

To provide a standard procedure we have been given the cooperation of Department's 7 and 12. These departments each have a Paint Storage Room that satisfies the Fire Codes. They have located in each of these rooms a grounded 55 gallon drum to dispose of their scrap thinners and solvents. When the drum is full it is sent to the Salvage Department for safe disposal.

This means of disposal is now available to all concerned. Those departments in Building 17 should contact Mark Duffy, Extension 280, as to the location of his disposal drum. All departments East of Arcade Street should use the drum located in the Department 7 Paint Circulation Room, located in the basement of Building 14. This is the room directly across the aisle from the Print Shop. Bill King, Extension 273 can be contacted about any questions concerning this room.

To provide yourself with a safe means of temporary storage and a container to transport the flammable liquid to the disposal drums, you can order through maintenance; either 2 or 5 gallon 'Flammable Liquid' disposal cans. They are numbered 5002A and 5005A respectively.

Please pass this information on to all concerned, instructing them to comply with this procedure.

Ben Kustelski  
Fire Marshall

## POLLUTION CONTROLS INC.

GRIGGS MIDWAY BUILDING

PHONE 645-5507

1821 UNIVERSITY AVENUE

ST. PAUL, MINNESOTA 55104

SUITE 161 SOUTH

445  
1086Call  
~~Bob~~

January 17, 1973

Gary A. Pulford  
Solid Waste Division  
Minnesota Pollution Control Agency  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440

Al Knutson  
Sales Manager

Dear Mr. Pulford:

This is to apprise you that Pollution Controls, Inc., is now accepting the Hazardous and Toxic waste of Whirlpool Corporation, 850 Arcade, St. Paul, Minnesota.

Upon destruction of these waste the appropriate monthly reports will be filed with the MPCA along with copies of our compliance certificate.

We will keep you informed of the materials received and destroyed.

We have found Whirlpool Corporation interested in complying with the rules and regulations of the MPCA and the State of Minnesota.

Respectfully,

  
F. Patrick McGrath

FPM/ck

cc: Whirlpool Corporation



*Handwritten*

*3/30/73*

00892

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Application  
of the PORT AUTHORITY of the CITY  
OF SAINT PAUL for a Permit to  
Conduct Dredging and Landfill  
Operations Involving the  
MISSISSIPPI RIVER, PIGS EYE LAKE  
and BATTLE CREEK in Portions of  
Sections 10, 15, and 22, T. 28 N.,  
R. 22 W., Ramsey County, Minnesota.  
P.A. 72-1037

FINDINGS OF FACT  
CONCLUSIONS  
ORDER AND PERMIT

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In accordance with applicable statutes, a public hearing was held concerning the above matter in the Federal Courts Building, 316 North Robert Street, St. Paul, Minnesota, on November 22 and 27, 1972. Mr. Eugene R. Gere, Director of the Division of Waters, Soils and Minerals, was appointed by the Commissioner of Natural Resources as referee to conduct the hearing. The Port Authority of the City of St. Paul (hereafter "Authority") had made application for a permit to conduct dredging operations to widen the course of the Mississippi River near Pigs Eye Lake in connection with the construction of a handling facility for low sulfur western coal involving encroachment into the waters of Pigs Eye Lake and relocation of Battle Creek.

Mr. Paul F. McCloskey, Assistant City Attorney, City of St. Paul, appeared on behalf of the Authority.

Mr. H. A. Gregg, Assistant County Attorney, appeared on behalf of Ramsey County.

Mr. William G. Peterson, Special Assistant Attorney General, appeared on behalf of the State of Minnesota.

The matter having been duly heard and all evidence and arguments having been considered, the Commissioner of Natural Resources

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Division of Waters,  
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hearing.  
The Port Authority of the  
City of St. Paul (hereafter  
"Authority") had made  
application for a permit  
to conduct dredging  
operations to widen the  
course of the Mississippi  
River near Pigs*

Resources now makes the following

#### FINDINGS OF FACT

1. Pigs Eye Lake has a total water surface area at normal pool stage of about 432 acres, located wholly within the City of St. Paul in portions of Sections 10, 11, 14, 15, 22, and 23, T. 28 N., R. 22 W., Ramsey County, Minnesota, and connected to the Mississippi River, a navigable waterway of the United States, by a constructed barge channel about 4,000 feet long and 400 feet wide, extending in a north-south direction.

2. The water surface elevation in Pigs Eye Lake is controlled by a dam (Lock and Dam No. 2 near Hastings, Minnesota) completed by the U. S. Army Corps of Engineers in 1930; the normal pool elevation is 687.2 feet above mean sea level, 1912 adjustment. Located in the Mississippi River flood plain and subject to fluctuations of as much as 15 feet higher or four feet lower than the normal pool level, the water surface elevation of Pigs Eye Lake normally fluctuates between 685 to 691 feet above mean sea level; the lake has a median depth of three to four feet and a maximum depth of about 12 feet at its point of connection to the excavated barge channel.

3. The Government Land Office plat of the Pigs Eye Lake Area, based on surveys made about 1850, indicates a large, nonmeandered marsh in the area of the present lake, connected on both north and south to the Mississippi River by natural channels, with Battle Creek flowing into the marsh area from the north and thence southerly into the Mississippi River.

4. The October 1896 edition of the St. Paul Quadrangle, initially published by the U.S. Geological Survey and reprinted in 1947, identifies "Pig Eye Lake" as a large body of open water

surrounded by extensive marshlands, similarly connected to the Mississippi River by two channels, with the lower portion of Battle Creek having been relocated from its original position to join the northernmost of these two channels.

5. In addition to the effect of Lock and Dam No. 2, the natural condition of Pigs Eye Lake has been further altered by large scale dredging and filling operations conducted primarily for the purpose of obtaining fill material for industrial land development:

(A) In 1966, pursuant to a permit from the Department of Conservation (P.A. 66-697), the Authority excavated the southern portion of the existing barge channel which connects Pigs Eye Lake to the Mississippi River at a point about 2.7 river miles downstream from the Metropolitan Wastewater Treatment Plant;

(B) In 1967, pursuant to Department of Conservation permit (P.A. 67-1128), the Authority excavated the northern portion of the barge channel, constructed an extensive embankment severing Pigs Eye Lake into two portions, and widened and deepened the Mississippi River channel in Sections 22, 23, and 26, T. 28 N., R. 22W.

6. Partly as a result of these operations, the lake now comprises 368 acres of water in its main body and an adjacent water body of about 64 acres. As required by Permit 67-1128, the two bodies are connected by culverts in three places. By the terms of the permit, the entire extent of open water created is dedicated as public waters.

7. Pigs Eye Lake provides suitable habitat for game fish including northern pike, sauger, walleye, sunfish, and crappie, in addition to numerous species of forage and rough fish.

8. Pigs Eye Lake is navigable by recreational watercraft. Access to the lake is available through the constructed barge channel. The lake is utilized for recreational and commercial fishing.

9. About sixty percent of the land adjacent to the natural shoreline of Pigs Eye Lake has typical wooded river flood plain vegetation including cottonwood, maple, willow, dogwood, nettles, and grasses.

10. Pigs Eye Lake is a lake with a limnological identification as a "deep marsh."

11. Pigs Eye Lake is ecologically suitable for propagation of waterfowl, aquatic furbearers, and fish. The lake and surrounding shorelands provide habitat for aquatic furbearers, tree nesting ducks, great blue herons, black crowned night herons, common egret, shorebirds, songbirds, pheasant, squirrel, fox, and deer. It also furnishes nesting cover for puddle ducks and waterfowl loafing sites. The area has been utilized for trapping of mink and muskrats. The area contains a valuable heron rookery area in the NE 1/4, Section 22, and NW 1/4, Section 23, T. 28 N., R. 22 W.

12. Pigs Eye Lake and its surrounding shoreland is visible from U.S. Highway 61, residential neighborhoods on the Mississippi River bluff north and east of the lake, and from Highwood, Battle Creek, and Indian Mounds Parks of the City of St. Paul, thus providing substantial scenic amenities for numerous area residents, travelers and the general public.

13. The value of the area to the public is diminished by the substantial industrial and commercial development existing around the Pigs Eye Lake shoreline. The lake is bordered by the Red Rock Industrial area, two major railroads and U.S. Highway 61, the Hoffman Avenue railroad yard, and the abandoned Pigs Eye landfill of the City of St. Paul. It is located within one-half mile of the Metropolitan Wastewater Treatment Plant which generates a discernible fetor in the area during part of the day.

14. The lake receives effluent from the nearby sewage treatment plant and seepage from the abandoned landfill immediately to its north. As a result, Pigs Eye Lake is highly fertile and turbid and is subject to algal blooms. The lake is underlain almost entirely by deep muck. It does not currently meet water quality standards for aquatic recreation which involve physical contact with the water such as swimming and water-skiing.

15. The waters of the severed smaller portion of the lake are considerably lower in their content of indicators of domestic pollution, such as sulphate ion, chloride ion, and phosphorus, than are the waters of the main portion of Pigs Eye Lake.

16. The water quality throughout Pigs Eye Lake can be improved by measures reducing the amount of subsurface leaching from the abandoned landfill and improving the efficiency of the Metropolitan Wastewater Treatment Plant.

17. Pigs Eye Lake is part of the Red Rock Industrial District and its bed is owned by the Authority. The industrial district comprises 1,725 acres, about 645 acres of which involve past or presently planned development.

18. Coal currently transported into this area from the Illinois and Kentucky coal fields, primarily by barge, has a sulfur content of three percent or more.

19. Regulations of the Minnesota Pollution Control Agency (hereafter "PCA") require that, without provisions for sulfur removal, the maximum sulfur content of coal used after June 1, 1973, in high capacity steam generators in the metropolitan area must be reduced to a maximum of 1.5 percent from a current maximum of 2.0 percent.

20. The Northern States Power Company (hereafter "NSP") meets the current metropolitan air quality standards at their High Bridge and Riverside generating plants located in the metropolitan area by mixing Illinois-Kentucky coal with low sulfur western coal. It was the uncontroverted assertion of NSP that this coal can feasibly be delivered only by rail and most economically by unit train.

21. PCA has approved a stipulation agreement with NSP providing in part that NSP will comply with PCA air quality regulations at its Black Dog and Allen S. King plants by June 1, 1975, contingent upon the completion of the proposed coal handling facility (hereafter "facility") by the Authority at Pigs Eye Lake.

22. The Authority and NSP are proposing an agreement whereby the facility would be constructed and owned by the Authority, leased to NSP, and operated by the Valley Camp Coal Company.

23. The facility would receive low sulfur western coal by unit train shipments for distribution by barge to the NSP's High Bridge, Black Dog, and Allen S. King generating plants

and to other large generating plants and coal users located along the commercially navigable waterway system in the states of Minnesota, Wisconsin, and Iowa. It would, however, be a public facility available to all users of low sulfur coal regardless of quantity purchased.

24. The Authority and NSP consider the proposed location of the facility desirable in that it is situated at the intersection of the lines of three major railroads and a landing site for commercial barge navigation. The Authority and NSP regard this fact as significant because they believe that this location will insure a continuous and reliable supply line for fossil fuel necessary for the uninterrupted production of electricity.

25. It was the uncontroverted assertion of representatives of the Chicago and Northwestern, Burlington-Northern, and Milwaukee railroads and NSP that there are no alternative sites in the vicinity of the Twin Cities metropolitan area which offer the unique intersection of the three railroads and commercial navigation facilities.

26. Within the Pigs Eye Lake area, the Authority and its consultants have studied alternative sites for the placement of the facility. The planned site utilizing about 62 acres of the abandoned Pigs Eye Landfill has the least possible impact on the environment of Pigs Eye Lake and the Mississippi River from the standpoint of minimal disturbance of the lakebed and riverbed due to dredging and filling.

27. The portions of the Authority's plans requiring a permit from the Commissioner of Natural Resources pursuant to Minnesota Statutes 1971, Section 105.42, include: Widening and

deepening the Mississippi River channel within the corporate boundary of the City of St. Paul in order to obtain about 3.5 million cubic yards of fill material by dredging along the easterly river bank within Section 15 and a portion of Section 22, T. 28 N., R. 22 W.; installation of 16 circular cells for barge mooring and loading facilities within a portion of the dredged area; encroachment onto about 1.5 acres of the bed of Pigs Eye Lake lying below normal pool level to facilitate placement of an exterior dike encircling the coal storage area in a portion of Section 10, T. 28 N., R. 22 W., and relocation of about one-half mile of the Battle Creek channel in Section 10.

28. No significant archaeological values exist in the Pigs Eye Lake area.

29. The facility is not expected to raise noise levels in the area.

30. A loss of about 50 acres of wooded area will be experienced through dredging, filling, and construction of a conveyor system between the Mississippi River and the coal storage area.

31. The adverse impact of the loss of the above wooded area will be compensated by the Authority establishing woody vegetation over an equivalent or greater area where such does not now exist.

32. The Authority and the Metropolitan Sewer Board will exchange land to permit construction of the facility. A Metropolitan Sewer Board representative testified that the facility will be compatible with present and anticipated future operations of the nearby Metropolitan Wastewater Treatment Plant.



33. The Authority has applied to the U. S. Corps of Engineers for a Department of the Army permit and to the PCA for certification of the Mississippi River dredging. Final action will not be taken on either of these applications until completion of an Environmental Impact Statement by the Corps.

34. In preparation of the Environmental Impact Statement, the Corps of Engineers may acquire information not currently available, or require further studies of the impact of the facility on environmental quality.

35. The February 24, 1970, report by Ecco, Dean, Austin, and Williams, entitled Mississippi River, set forth a land use concept plan accepted by the St. Paul Planning Board in March 1971 and by the St. Paul City Council during April 1972. This does not indicate any industrial development adjacent to the Pigs Eye Lake shoreline in the vicinity of the planned lake encroachment. Rather, it proposes that this area remain in open space use. Land use controls of the City of St. Paul include the Pigs Eye Lake area in the unassigned or unrestricted use category.

36. A report entitled Ramsey County Open Space System, dated February 1971, indicates that a considerable amount of the currently undeveloped Pigs Eye Lake shoreland was proposed for inclusion in the County open space system.

37. The Board of Ramsey County Commissioners passed a resolution of intent dated February 28, 1972, to acquire title to Pigs Eye Lake and the undeveloped adjacent land for recreational purposes.

38. The Ramsey County Parks and Recreation Department has developed a proposal for recreational development of the above area, approved on November 21, 1972, by resolution of the Ramsey County Parks and Open Space Commission, including lake dredging, marina construction, habitat preservation, a bird sanctuary, a picnic area, and an all-terrain vehicle area.

39. By resolution dated November 21, 1972, the St. Paul City Council stated that the proposed facility is: "...consistent with the comprehensive land use plans adopted by this Council."

40. The heron rookery area is located on a point of land adjacent to the excavated barge channel connecting Pigs Eye Lake to the Mississippi River, across the channel from existing industrial development. The rookery area is separated from the proposed coal storage area by a distance of about 8,000 feet and from the proposed dredging area by a minimum distance of about 1,500 feet, a significant portion of this latter distance crossing an area dredged in 1967 and currently utilized for barge staging.

41. The resident heron and egret populations utilize the rookery area for nesting, whereas feeding occurs over a large area not limited to the near vicinity of Pigs Eye Lake.

42. Neither the factors governing the location of heron rookeries nor the effects of nearby development on rookery utilization are fully understood by ornithologists. The evidence of the impact which the facility would have on the rookery is inconclusive.

43. Periodic maintenance dredging will be necessary along the mooring cells abutting the river for which prior written permission from the Commissioner of Natural Resources is required by statute.

44. Adverse environmental impacts due to disposal of dredged spoil material will be minimized by utilizing only disposal sites approved by the Department of Natural Resources.

45. The coal stockpile will be enclosed within a dike extending about 23 feet above the elevation of the adjacent flood plain land to a point above the regional (100-year frequency) flood stage. The railroad approach grade leading to the coal storage area will be similarly elevated.

46. The diked coal storage area will not be located in the floodway of the Mississippi River and will not cause measurable increases in either flood stages or potential flood damages.

47. The protection dikes for the coal storage area will be sloped at a ratio of three horizontally to one vertically. Improper placement of these slopes can contribute significant amounts of sediment pollution to Pigs Eye Lake and the Mississippi River.

48. Sedimentation may be reduced by proper fill placement. The Authority should prepare a fill placement and sedimentation control plan for approval by the State of Minnesota.

49. The Authority proposes three staggered rows of trees inside the railroad tracks at the top of the berm plus seeding and extensive plantings of large shrubs on the exterior embankment slope.

50. The portion of the embankment slope lying below the elevation of 691 feet above mean sea level will be subject to erosion from wave action and water inundation.

51. The foregoing adverse environmental effect can

be corrected by providing riprap protection for the portion of the embankment lying below elevation 691 feet. The Authority should develop plans and specifications for such erosion protection for approval by the Department of Natural Resources.

52. Construction of the coal storage area will convert about 35 acres of the abandoned landfill from its present relatively barren condition to a condition capable of supporting terrestrial vegetation.

53. It was the uncontroverted testimony of witnesses for the Authority that the encroachment into Pigs Eye Lake will occur in an area adjacent to the abandoned landfill which has very little vegetation and is not utilized extensively by fish or other forms of wildlife.

54. Adequate space will be provided on the embankment slope for a hiking trail.

55. Within the coal storage embankment, coal will be stockpiled to an elevation approximately 27 feet above the top of the dike. The objections of area residents to the facility primarily involved its visual impact.

56. The weight of the proposed embankment and coal stockpile may tend to reduce the leaching of pollutants into the lake from the abandoned landfill.

57. The Authority's engineers do not anticipate major changes in the configuration of the bottom contours of Pigs Eye Lake or the adjacent shoreland. Should such changes materialize, the adverse impact thereof can be corrected by an amendment of this Order directing the Authority to remove such mud wave formation.

58. The Authority has submitted plans for the interior drainage system and water pollution control facilities for the coal storage area to the PCA in order to obtain a discharge permit assuring that all effluents meet applicable water quality standards.

59. The Authority proposes construction of an additional earthen embankment generally extending in an east-west direction adjacent to and across the northerly shoreline of Pigs Eye Lake to reduce the leaching of pollutants from the old landfill into the lake.

60. A feasibility study of the above measure should be conducted by the Authority's engineers and, if positive, plans for such construction should be submitted to the Department of Natural Resources for approval.

61. Battle Creek, which will be relocated, issues from Battle Creek Lake located in Section 6, T. 28 N., R. 21 W., in the Village of Woodbury, Washington County, thence meandering through Section 1, T. 28 N., R. 22 W., in the Village of Maplewood, Ramsey County, thence flowing through Section 2 and portions of Sections 3 and 10, T. 28 N., R. 22 W., in the City of St. Paul, Ramsey County, to its junction with Pigs Eye Lake.

62. Upstream from the undercrossing of U.S. Highway 61 in the SE 1/4 Section 3, T. 28 N., R. 22 W., Battle Creek is a steeply descending stream meandering through a scenic wooded valley traversing several heavily developed residential areas and Battle Creek Park of the City of St. Paul; between Highway 61 and Pigs Eye Lake, the creek predominantly meanders through marshlands and is piped beneath the Hoffman Avenue railroad yard.

63. The reach of Battle Creek downstream from the Hoffman Avenue railroad yard will be relocated. It is about 10 feet wide, less than one foot deep at normal flow, and its bed is primarily muck.

64. The relocated channel of Battle Creek will be curvilinear with gravel channel slope protection and shrubs and grasses adjacent to the channel. These alterations will not adversely affect existing recreational or fisheries values of the creek.

65. Minnesota Statutes 1971, Section 458.16, Subd. 3, grants the Authority jurisdiction over recreation and recreational facilities along the river and authorizes the Authority to construct and maintain recreational facilities.

66. Resolution No. 800 adopted by the Authority's Board of Commissioners on October 31, 1972, provides in part: ". . . that the development will not significantly impair the development potential of recreational facilities in the district and will allow and permit the adjacent Pigs Eye Lake shoreline to remain undisturbed and conducive to open space development."

67. A representative of the Authority stated that the remaining 1,080 acres of the 1,725 acre industrial district will be reserved for open space and recreation.

68. The proposed development extending into Pigs Eye Lake including plans for aesthetic landscaping, erosion control, and incorporation of space for a future trail system will not by itself significantly interfere with any public use of Pigs Eye Lake.

69. Unrestricted future development adjacent to and into Pigs Eye Lake would in combination with the impact of the proposed facility substantially reduce the public value of the lake and be detrimental to the public interest.

70. The public interest will be best served by reservation of the remaining land and water of the Pigs Eye Lake area for open space and recreation, as proposed.

Pursuant to the foregoing Findings of Fact, the Commissioner makes the following

#### CONCLUSIONS

I. That the application of the Authority (P.A. 72-1037) and the proceedings of the Commissioner thereon substantially conformed to the requirements of Minnesota Statutes 1971, Chapter 105.

II. That Pigs Eye Lake and Battle Creek are capable of substantial beneficial public use and accordingly are public waters.

III. That the applicant's proposal, subject to the terms and conditions herein set forth, will not significantly interfere with the waters of Pigs Eye Lake and Battle Creek and will not be detrimental to the public use thereof.

IV. That the applicant's proposal will not interfere with water flowage in the Mississippi River to the detriment of the public use thereof.

V. That the applicant's proposal, based upon information currently available, provides for a practical use of the waters of the state and will, with conformance to the permit provisions hereafter stated, promote public welfare and protect public safety.

VI. That a permit should be granted to the Authority at this time to change the course, current, or cross section of the Mississippi River, Pigs Eye Lake, and Battle Creek in connection with construction of the proposed Pigs Eye coal handling facility.

Based upon the foregoing Findings of Fact and Conclusions, the Commissioner of Natural Resources hereby issues the following

#### ORDER AND PERMIT

Pursuant to Minnesota Statutes 1971, Chapter 105, a permit is hereby issued to the applicant, the Port Authority of the City of Saint Paul, authorizing:

A. Widening and deepening the Mississippi River channel by dredging along the easterly river bank within Section 15 and a part of Section 22, T. 28 N., R. 22 W., in order to obtain about 3.5 million cubic yards of fill material;

B. Installation of 16 circular cells for barge mooring and loading facilities within a portion of the area to be dredged;

C. Encroachment onto about 1.5 acres of the bed of Pigs Eye Lake lying below normal pool level in a portion of Section 10, T. 28 N., R. 22 W., in order to facilitate placement of an exterior dike for the coal storage area; and

D. Relocation of a reach of Battle Creek about one-half mile in length located downstream from the Hoffman Avenue Railroad yard in Section 10, T. 28 N., R. 22 W.

All for the purposes of constructing a handling facility for low sulfur western coal adjacent to Pigs Eye Lake.



This permit is granted subject to the following

#### TERMS AND CONDITIONS

1. This permit is issued subject to the Environmental Impact Statement in preparation. Should such Statement reveal adverse environmental consequences not indicated in the testimony in this proceeding or anticipated by this Order, the Commissioner may in his discretion cancel, suspend or modify this Order, with or without further public hearings, in order to consider such matters and incorporate them into his determination hereon, pursuant to the powers of the Commissioner, Minn. Stat. § 105.44, subd. 9.

2. The Authority (hereafter "Permittee") shall reserve the remaining 1,080 acres of land and water area of the Red Rock Industrial District for open space and recreational use pursuant to a plan of the Permittee to be submitted to the Commissioner.

3. Permittee shall provide for extensive tree and shrubbery plantings on the railway approach grade and the embankment encircling the coal storage area.

4. Permittee may relocate the channel of Battle Creek provided it is placed on a curvilinear alignment with gravel slope protection for the channel and shrubs and grasses adjacent thereto.

5. Permittee shall develop a plan for monitoring utilization of the heron rookery area for approval by the Commissioner, such monitoring to be implemented by the Permittee prior to the start of construction and continued until the Commissioner approves termination thereof.

6. Permittee shall submit a plan for controlling sedimentation during construction of the coal storage embankment to the Commissioner and receive his written approval thereof prior to the start of embankment construction.

7. Permittee shall keep the Commissioner apprised of the progress of the construction work of said coal handling facility by reports in such form and frequency as the Commissioner shall require.

8. Permittee shall remove any mud wave forming in or near Pigs Eye Lake to the satisfaction of the Commissioner.

9. Fill or spoil material may be deposited only as specified in the project plans. Placement of any fill material in other locations within the flood plain of the Mississippi River or on the bed of Pigs Eye Lake below normal pool level is expressly prohibited.

10. Permittee shall furnish to the Commissioner for approval plans and specifications for riprapping the embankment slopes lying below elevation 691.

11. Permittee shall report to the Commissioner upon the feasibility of constructing an additional dike to reduce leaching of pollutants from the abandoned landfill. If feasible, the Permittee shall construct such dike upon receipt of the Commissioner's approval of plans therefor.

12. Permittee shall submit to the Commissioner for approval plans and specifications for the planting of trees and woody vegetation over a currently unwooded area at least equivalent to the wooded area to be destroyed in construction of the facility.

13. Permittee shall, prior to any maintenance dredging of the widened portion of the Mississippi River, furnish to the Commissioner an estimate of the quantity of material involved, its proposed disposal site, and the sedimentation prevention measures proposed. Maintenance dredging may not be commenced without the Commissioner's approval of the plan.

14. Permittee shall comply with all rules, regulations, requirements, or standards of the PCA and all other applicable local, state, or federal rules, regulations, requirements or standards.

15. This permit shall not release Permittee from any liability or obligation imposed by Minnesota Statutes or local ordinances relating thereto and shall remain in force subject to all conditions and limitations now or hereafter imposed by law.

16. This permit is not assignable except with the written consent of the Commissioner of Natural Resources.

17. Permittee shall not make or procure another to make any additional changes, beyond those herein authorized, in the course, current or cross section of Battle Creek, Pigs Eye Lake, or the Mississippi River, without the written permission of the Commissioner of Natural Resources previously obtained.

18. Permittee shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Natural Resources for inspection of the operation authorized hereunder.

19. This permit may be terminated by the Commissioner of Natural Resources, without notice, at any time he deems it

necessary for the conservation of the water resources of the state, or in the interest of public health and welfare, or for violation of any of the provisions of this permit.

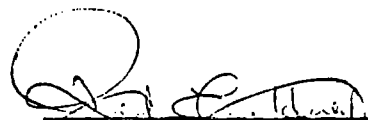
20. In all cases where the doing by the Permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights, or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the Permittee, before proceeding therewith, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests necessary therefor.

21. This permit is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from an act or omission of the Permittee or any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against the Permittee, its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the Permittee, its agents, employees, or contractors for violation of or failure to comply with the provisions of the permit or applicable provisions of law.

22. In accordance with Minnesota Statutes 1971, Section 105.46, all construction authorized by this permit must be completed within three years of date of issuance hereof, which

time limit may be extended thereafter for good cause shown.

Dated at Saint Paul, Minnesota, this 27 day of  
March, 1973.

  
\_\_\_\_\_  
ROBERT L. HERBST  
Commissioner of Natural Resources

## APPLICATION FORM FOR PARTIAL REFUND OF SEWER SERVICE CHARGE

00913

MONTH OF April 19 73BILLING DATE April 30

Well 323  
6" Sparling 16377  
852 Arcade St.

Well 484  
8" Sparling 37997  
837 Arcade St.

City Supply  
4" HER. C. 3032034  
838 Arcade St.

## I. WELLS

## A) TOTAL CONSUMPTION

Well 323 Consumption 71425  
+ Well 484 Consumption 21500 ..... 43225 CCF

## B) TOTAL CLEARWATER

Bldg. 17 Clearwater 3,941,400  
+ Bldg. 21 Clearwater 20,392,400  
30,333,800 GALS ÷ 748 ..... 40546 CCF

(DATE: From March 30 to April 27)

## C) SANITARY SEWAGE FACTOR

$\frac{A-B}{A} = \text{Factor}$

$\frac{43225 - 40546}{43225} = \frac{2679}{43225} = \dots \dots \dots .062$

## D) ADJUSTED CONSUMPTION

(Well 323 Consumption) X (C) ..... 1328 CCF

(Well 484 Consumption) X (C) ..... 1352 CCF

## E) ADJUSTED CHARGE

Well 323 342.00  
+ Well 484 347.00  
\$ 689.00 ..... \$ 1.89.00

## F) ORIGINAL CHARGE

Well 323 4440.75  
+ Well 484 4512.00  
\$ 8952.75 ..... \$ 8952.75

G) TOTAL WELL REFUND ..... \$ 8263.75  
(F-E)

## II. CITY SUPPLY

A) TOTAL CONSUMPTION . . . . . 431.7 CC

B) TOTAL BOILER FEEDWATER

1,000,000 GALS ÷ 748 . . . . . 1336 CC(DATE: From 7/1/73 to 7/31/73)C) 95% TOTAL BOILER FEEDWATER . . . . . 1269 CCD) ADJUSTED CONSUMPTION . . . . . 71.05 CC  
(A-C)E) ADJUSTED CHARGE . . . . . \$ 762.57F) ORIGINAL CHARGE . . . . . \$ 1241.64G) TOTAL CITY SUPPLY REFUND . . . . . \$ 712.57

## III. TOTAL REFUND

A) WELL REFUND (I-G) . . . . . \$ 8263.75B) CITY SUPPLY REFUND (II-G) . . . . . \$ 312.57\$ 8576.32

SIGNED

Norman R. Rinal

TITLE

Utility Engineer

DATE

May 1, 1973

SITE NAME: PIG EYE LANDFILL

DCN: 00915

= PAGES: 1

DATE: 6-29-73

SOURCE: \_\_\_\_\_

AUTHOR: E.W. HARTUNG

RECIPIENT: \_\_\_\_\_

TITLE: Environmental Projects to Come

SUMMARY: The document lists the following environmental projects to come: Separate Industrial Waste water from Sanitary Waste Materials (74); Additional Solid High Density Waste Compactor (74); New FUMCON system for Hydrocarbon Emission Reduction (75); Provide Pretreatment of Industrial Waste Waters (76); Provide Porcelain Dust Collector Cyclones for Particulate Emissions (77); and Install Cooling Tower & Re-circulating System for all Cooling Waters.

PRP'S WATERP \_\_\_\_\_

TRANSPORTERS \_\_\_\_\_

CODED BY RP

ENTERED BY \_\_\_\_\_

Q A BY \_\_\_\_\_

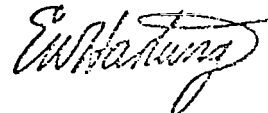


June 29, 1973

00915

ENVIRONMENTAL PROJECTS TO COME

Separate Industrial Waste Water from Sanitary Waste Materials.	1974
Additional Solid Hi Density Waste Compactor.	1974
New Finishing Systems for Hydrocarbon Emission Reduction.	1975
Provide Pretreatment of Industrial Waste Waters.	1976
Provide Porcelain Dust Collector Cyclones for Particulate Emissions.	1977
Install Cooling Tower and Re-circulating System for all Cooling Waters.	1978



E. W. Hartung

*Dick*

Here is a list of Environmental Projects to come and projects completed. Also a list of reports that are needed yearly

ENVIRONMENTAL PROGRESS TO DATE

00916

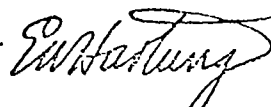
Purchased & Installed 3 Solid Waste Compactors (2 for Re-cycling Cardboard & 1 for Waste)	May 1968
Eliminated Incineration of Waste Materials	June 1968
Filed 1st Emission Inventory Report with M.P.C.A. (yearly since then)	Oct 1970
Filed 1st Emission Inventory Report with City of St. Paul. (yearly since then).	June 1971
Low Sulphur No. 2 Fuel Oil on Site & Available for Air Alert Episodes	June 1971
1st Property Line Noise Survey Completed and Documented. (yearly since then).	Sept. 1971
Separated Cooling Water from Sanitary & Industrial Waste Waters	Oct 1971
Applied for Corps of Engineers Discharge Permit.	Feb 1972
Applied for M.P.C.A. Discharge Permit	Feb 1972
First SO <sub>2</sub> Alert Called by M.P.C.A. on 10th, Continued for 27 Hours.	Feb 1972
Metering Equipment Installed for Cooling Water. Sewer Charge Rebate.	March 1972
Upgraded Porcelain Dust House, (sealing & new filters).	Oct 1972
Started Incinerating All Liquid Wastes (rather than dumping in landfills)	Jan 1973
Received First Operating Permit for the Boilers from City of St. Paul.	June 1973



E. W. Hartung

ENVIRONMENTAL PROGRESS TO DATE

Purchased & Installed 3 Solid Waste Compactors (2 for Re-cycling Cardboard & 1 for Waste)	May 1968
Eliminated Incineration of Waste Materials	June 1968
1. <u>Filed 1st Emission Inventory Report with M.P.C.A. (yearly since then)</u>	Oct 1970
2. <u>Filed 1st Emission Inventory Report with City of St. Paul. (yearly since then).</u>	June 1971
Low Sulphur No. 2 Fuel Oil on Site & Available for Air Alert Episodes	June 1971
3. <u>1st Property Line Noise Survey Completed and Documented. (yearly since then).</u>	Sept. 1971
Separated Cooling Water from Sanitary & Industrial Waste Waters	Oct 1971
Applied for Corps of Engineers Discharge Permit.	Feb 1972
Applied for M.P.C.A. Discharge Permit	Feb 1972
First SO <sub>2</sub> Alert Called by M.P.C.A. on 10th, Continued for 27 Hours.	Feb 1972
Metering Equipment Installed for Cooling Water Sewer Charge Rebate.	March 1972
Upgraded Porcelain Dust House, (sealing & new filters).	Oct 1972
Started Incinerating All Liquid Wastes (rather than dumping in landfills)	Jan 1973
Received First Operating Permit for the Boilers from City of St. Paul.	June 1973

  
E. W. Hartung





TYPICAL MOUNDS OF TRASH on the Pig's Eye site. Great flocks of pigeons seem to be the only inhabitants around this spot.

# Proposed terminal site looks shangri-la feel

By BOB MARKUSEN

The proposed Pig's Eye Lake terminal has been the subject of widespread controversy recently, with objections centering on the possible ecological hazards involved.

Many people believe that construction of the terminal will result in air pollution blowing coal stockpiles and pollution of the Mississippi River and surrounding waters.

Actions debate over

Others point to the potential destruction of a heron rookery three miles away resulting from increased use of barges on the river.

In light of this controversy, the Union Advocate decided to examine the area that some conservationists have labeled a potential wildlife refuge.

The Advocate found that most of the area, much of which was farmland in 1960, is today a wasteland of sludge, trash and

noxious odors.

Viewed from a distance in mid-August, the area appears pleasant enough, with high weeds hiding most of the wastes.

Anyone bothering to travel down Childs Rd. along the river sees a different picture. Mounds of salt, gravel and sand obscure the landscape. Strong odors from the Portland Cement Works and the Knappen Molasses Co. rule out the area being used by humans for any sort of leisure activity.

Near the area proposed for

## UNION ADVOCATE

SINCE 1896



MINNESOTA'S LEADING  
LABOR NEWSPAPER

St. Paul, Minn. 55103

10 Cents

August 13, 1973

2759

Vol. 27, No. 33

## COPE amendments are submitted to Assembly

First reading of proposed amendments designed to bring the constitution of the St. Paul Trades & Labor Assembly into compliance with new rules of the national AFL-CIO, was done at last Wednesday's meeting of the Assembly delegates at the Labor Temple auditorium.

In the main, the amendments which will receive final action at the next Assembly meeting on Wednesday, September 12, eliminate reference to the old Legislative Committee and substitute instead the new Committee on Political Education (COPE) as required by the AFL-CIO.

The new Article XI spells out the composition of the new COPE, which according to the AFL-CIO rules must be headed by the Assembly president with the

portion would then read:

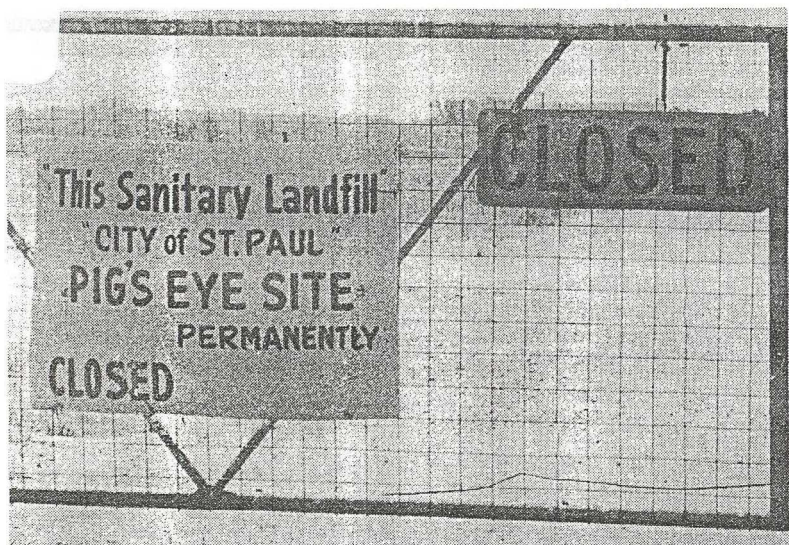
"a. This thirty-two cent (32c) tax shall be distributed as follows: 19c per capita to the Union Advocate; 8.5c of per capita to the Assembly office; 4.5c of per capita to the Committee on Political Education Fund.

ARTICLE VII—Section 1—Page 12: Change to read as follows:

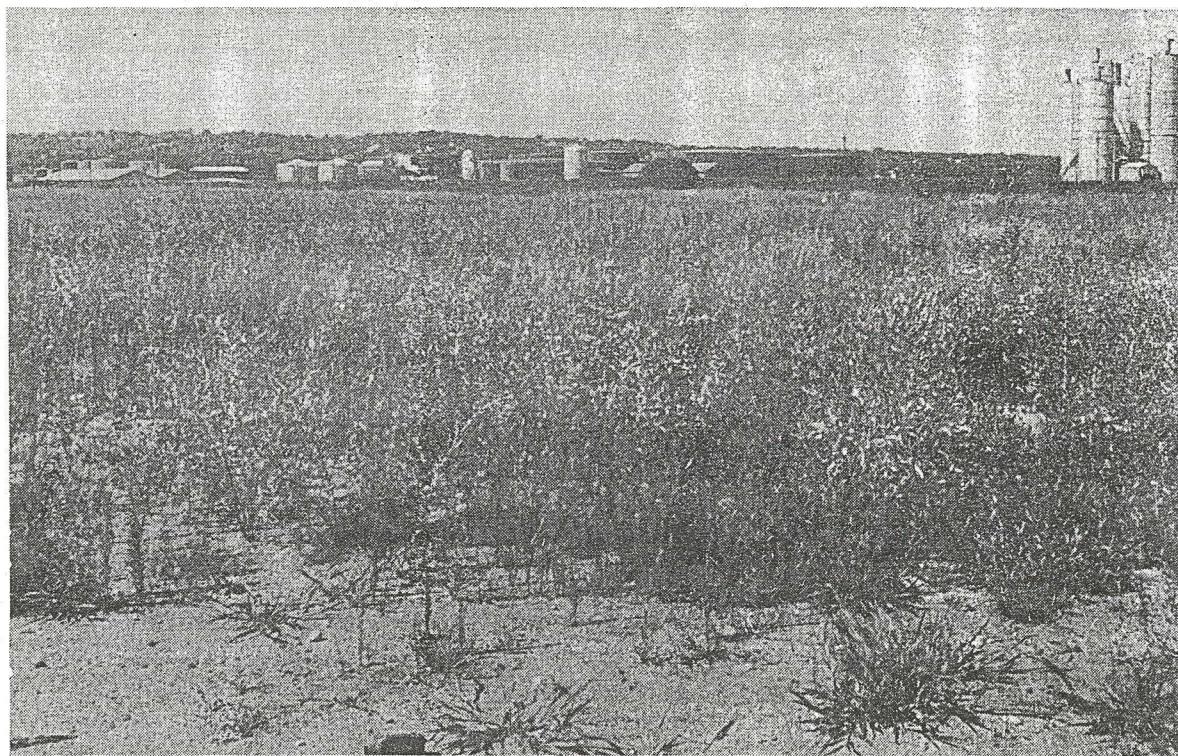
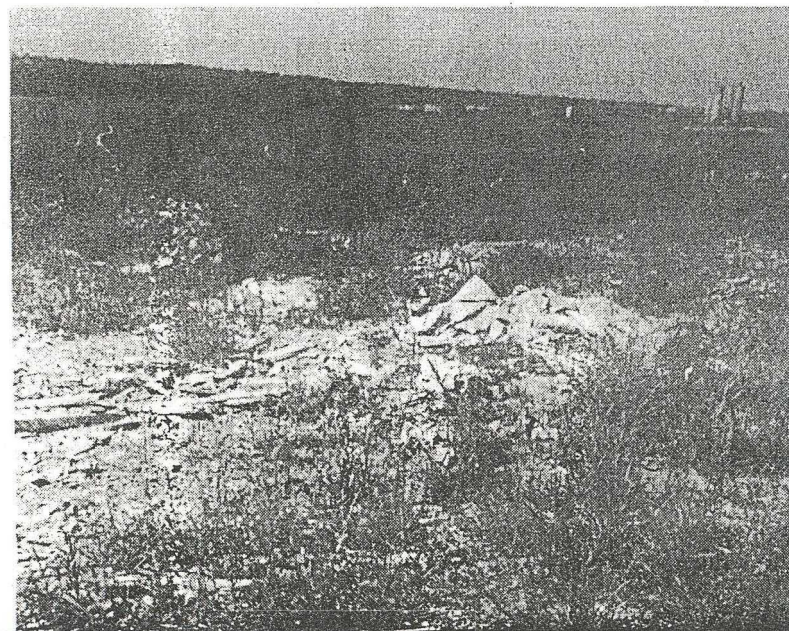
"Section 1. The President shall preside and preserve order at all meetings of the Assembly. The President shall preside and preserve order at all meetings of the Executive Board; appoint all committees not otherwise provided for; and transact such other business as may of right appertain to the office. The President shall be Chairman of the Committee on Political Education and ex-officio member of all other



# *Pigs Eye is actually sow's ear*



THE FORMER CITY DUMP is the proposed site of the coal-handling terminal.

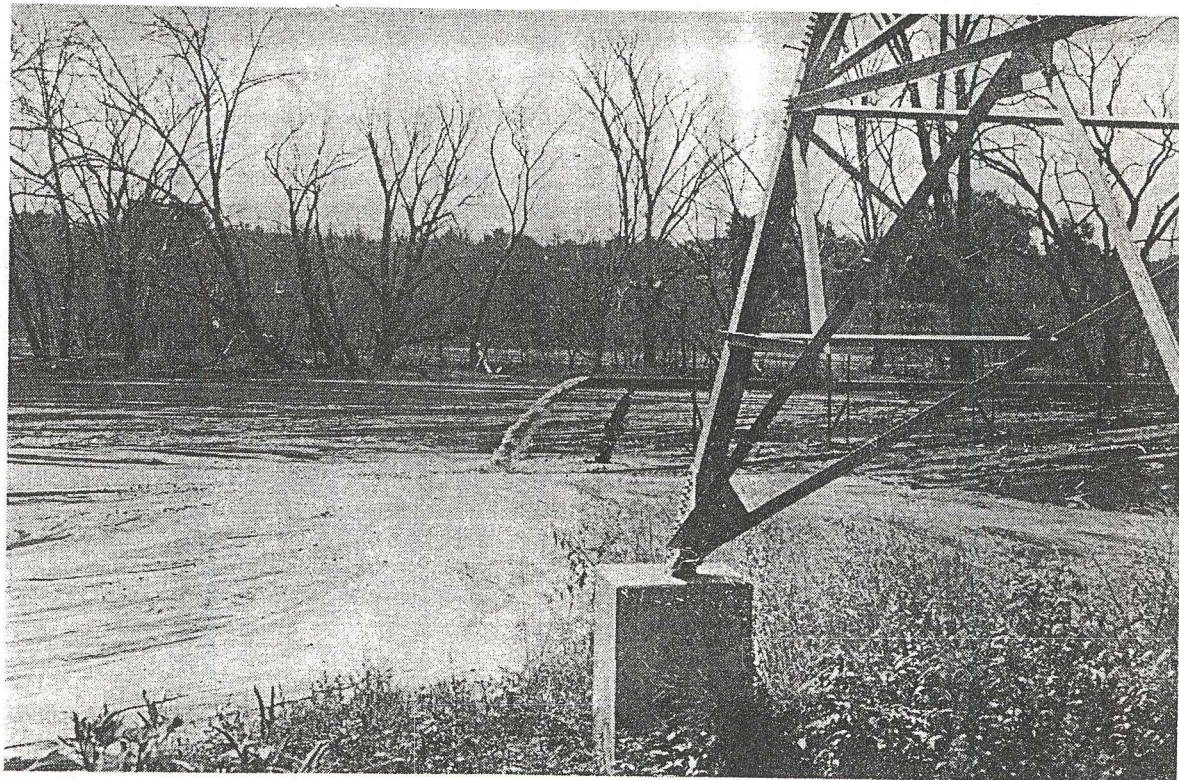


THE BREATH-TAKING BEAUTY of the Pigs Eye scene. Weeds dominate the area, with factories and storage tanks in the background.

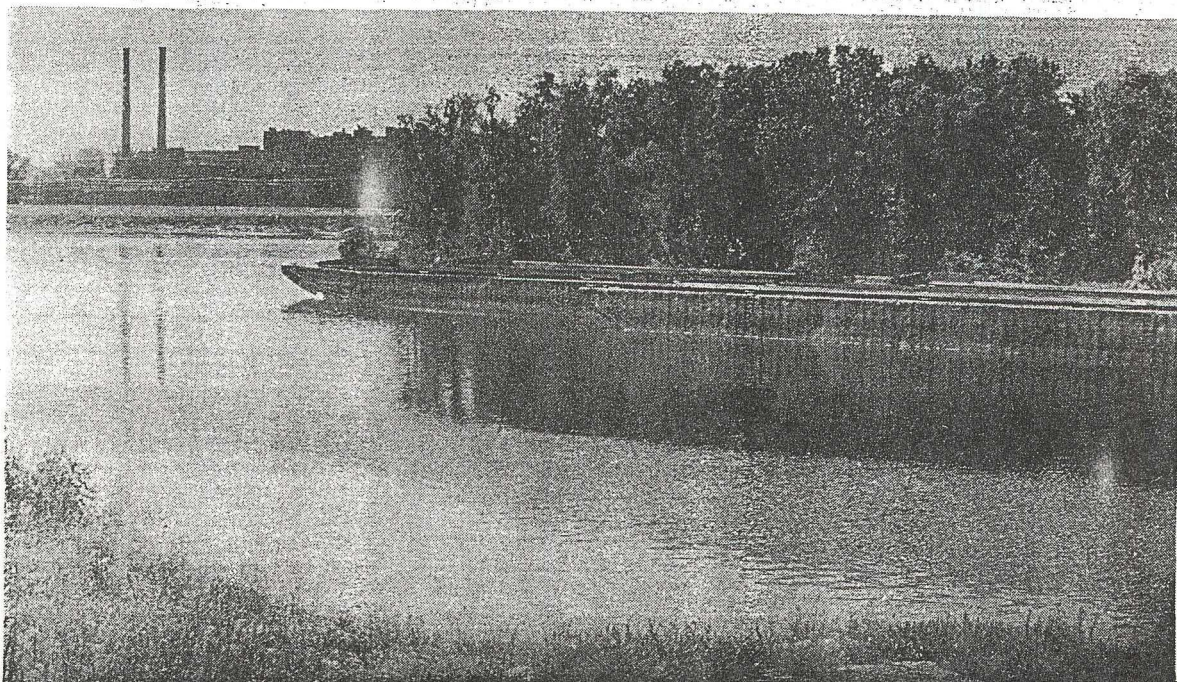




**THE BREATH-TAKING BEAUTY** of the Pigs Eye scene. Weeds dominate the area, with factories and storage tanks in the background.



**SEWAGE SPILLS FROM PIPES FROM A NEARBY SEWAGE PLANT.** The wastes have killed the trees in the background and defoliated a sizable section of the landscape.



ill is everywhere at the





UNIVAC PARK, P.O. BOX 3525  
ST. PAUL, MINNESOTA 55165  
TELEPHONE (612) 456-2222

Ramsay City  
files-A"

File RA 00920  
JC 149

JAN 15 1974  
MINN. POLLUTION  
CONTROL AGENCY

10 January 1974

Minnesota Pollution Control Agency  
717 Delaware Street South East  
Minneapolis, Minnesota 55440

Attention: Mr. John C. Lichter

Subject: Letter of October 4, 1973, from  
R. J. Martin.

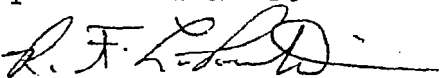
Gentlemen:

In Mr. Martin's communication to you, he indicated the types of hazardous wastes to be disposed of by Univac based on past records. We appreciate your discussions with Mr. Martin and the discussions of Mr. Forsberg with myself in the past, however, at present it appears to be somewhat confusing as to the approved vendors through which Sperry Univac can dispose of such materials. I would appreciate receiving a list from you of sources we could contact for disposing of acids, oils, fluxes, alcohol and solvents.

Please advise which organization has jurisdiction over disposal of subject wastes when talking to MPCA, County Health Boards, Metropolitan Sewer Board, etc.

If a meeting would be advantageous to discuss the above further, please contact the writer at 456-3302 and we will be happy to discuss the very important subject of hazardous waste disposal. I would appreciate being copied in on all communications which you might have with our pollution control coordinator Mr. R. J. Martin since I am the Purchasing representative. My address would be identical to his for mailing other than my mail station is 8861.

I would appreciate a response by 1-18-74. If not possible, please call me.



R. F. LaPointe  
Sr. Buyer

called 1-16-74

RFL/ca

CC: R. J. Martin  
J. Cihunka

00921

Community Solid Waste Practices  
LAND DISPOSAL SITE MODIFICATION REPORT

1. STATE <i>MINN</i>	2. COUNTY <i>Ramsey</i>	3. SITE LOCATION (POLITICAL JURISDICTION) <i>ST. Paul City</i>
4. NAME OF SITE <i>Pig's Eye Landfill</i>	5. ADDRESS OF SITE <i>Pig's Eye Lake Rd.</i>	6. DATE OF REPORT DAY: <i>26</i> MONTH: <i>02</i> YEAR: <i>79</i>
7. NAME OF PERSON COMPLETING FORM <i>J. Genter</i>	8. TITLE <i>GC II</i>	9. ORGANIZATION AND ADDRESS <i>MPCA</i>

10. Original Land Disposal Site Problems (check appropriate categories)

☐ Burning ☐ Water Pollution ☒ Lack of Daily Cover

11. Site Has Been (check A or B and appropriate actions completed)

A ☒ Eliminated and;  
☒ Rats Eradicated  
☒ Burning Stopped  
☐ Water Pollution Corrected  
☒ Access Prohibited  
☒ Site Covered  
☐ Other \_\_\_\_\_  
 B ☐ Converted to Sanitary Landfill and;  
☐ Rats Eradicated  
☐ Burning Stopped  
☐ Water Pollution Corrected  
☐ Daily Cover Practiced  
☐ Other \_\_\_\_\_ (Specify)

12. Reason for Modification (check one)

☒ Law ☐ Operation Completed ☐ Other \_\_\_\_\_ (Specify)

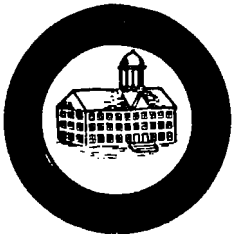
13. Date Modification Completed

Day: *01* Month: *07* Year: *73*

14. Waste Formerly Hauled to the Eliminated Site Now Being Hauled to:

County	Site Location	Name of Site	Address	Tons or Percent
A <i>Washington</i>		<i>Washington County, Sanborn</i>		<i>100</i>
B			<i>Landfill</i>	
C				
D				
E				





CITY OF SAINT PAUL  
OFFICE OF THE MAYOR

00922

264243

LAWRENCE D. COHEN  
MAYOR

September 30<sup>N</sup>, 1974

OCT - 3 1974

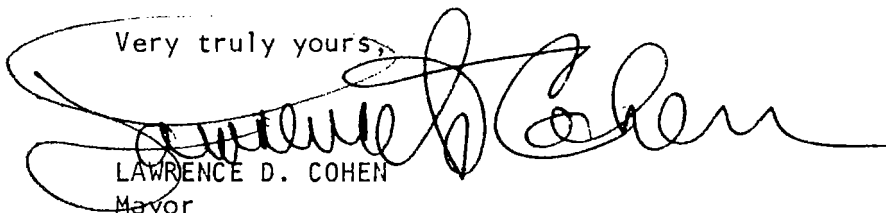
7 DEPTS.

Mr. Robert F. Sprafka  
Executive Vice President  
Port Authority of Saint Paul  
330 Minnesota Building  
Saint Paul, Minnesota 55101

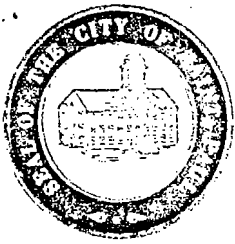
Dear Mr. Sprafka:

The City of Saint Paul has discontinued the Pig's Eye Landfill and the Old Fish Hatchery Landfills. The Port Authority, by Agreement dated February 21, 1967, authorized the City of Saint Paul to enter on a portion of the Port Authority property for the purpose of conducting a public sanitary landfill. This Agreement provided that either the City or the Port Authority may terminate the Agreement by giving sixty (60) days written notice thereof to the other party. In accordance with this Agreement and authority granted to me by the Saint Paul City Council, I hereby notify you that the City of Saint Paul does hereby terminate that certain license Agreement between the Port Authority and the City of Saint Paul, dated February 21, 1967, sixty (60) days from and after the date of this letter.

Very truly yours,

  
LAWRENCE D. COHEN  
Mayor

cc: Frank Marzitelli, City Administrator  
Daniel Dunford, Dir., Department of Public Works  
Robert Trudeau, Dir., Department of Finance



# CITY OF SAINT PAUL

OFFICE OF THE MAYOR

00923

NOV 10 1974

LAWRENCE D. COHEN  
MAYOR

September 30, 1974

The Chicago, Burlington and  
Quincy Railroad Company  
Dayton's Bluff, Minnesota

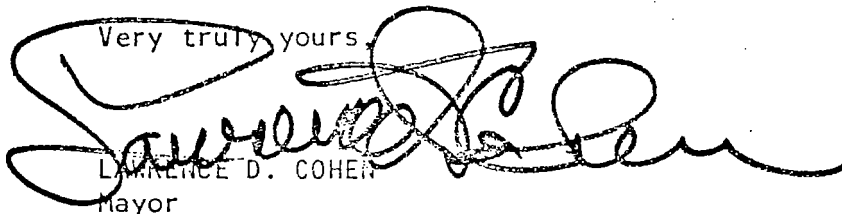
Attention: Superintendent of Terminals

Gentlemen:

The City of Saint Paul and the Chicago, Burlington and Quincy Railroad Company have entered into a certain Agreement, dated the 1st day of March, 1962, whereby the City obtained the right to use a portion of the Railroad property for sanitary landfill purposes, which Agreement permits the termination thereof by the giving of thirty (30) days written notice thereof to the other party. For your information I am attaching a copy of this Agreement. The Agreement was further modified by a letter Agreement of September 11, 1962, a copy of which is attached.

In accordance with the terms of our Agreement and pursuant to the authority granted to me by the Saint Paul City Council, I hereby notify you that the City of Saint Paul does hereby terminate the above-referenced lease Agreement thirty (30) days from and after the date of this notice. The City of Saint Paul is no longer operating a sanitary landfill on this property. I wish to thank you for your cooperation in the past and in the future.

Very truly yours,



LAWRENCE D. COHEN  
Mayor

Encls.

cc: Frank Marzitelli, City Administrator  
Daniel Dunford, Dir., Department of Public Works  
Robert Trudeau, Dir., Department of Finance

## BURLINGTON NORTHERN

WILBURN R. ALLEN  
Vice President --  
Twin Cities Region

Burlington Northern Inc.  
Seventeen Washington Ave. N.  
Minneapolis, Minnesota 55401

The Honorable Lawrence D. Cohen  
Mayor of the City of St. Paul  
City Hall  
St. Paul, Minnesota 55102

October 16, 1974

Dear Sir:

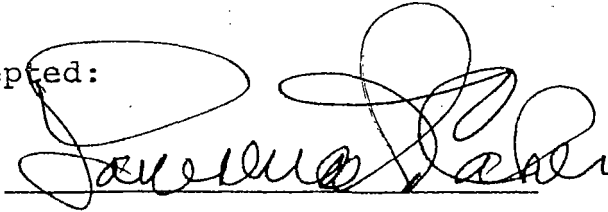
This will acknowledge receipt of your September 30, 1974 letter indicating your desire to terminate agreement dated March 1, 1962, as supplemented September 11, 1962, between the City of St. Paul and the former Chicago, Burlington and Quincy Railroad Company, authorizing the city to use portion of railroad property for sanitary landfill purposes.

Burlington Northern Inc., successor in interest to the former Chicago, Burlington and Quincy Railroad Company by merger, is agreeable to termination of the above referenced agreement effective October 30, 1974 in accordance with terms of the agreement.

Will you kindly acknowledge receipt in the space provided below in the lefthand corner of this letter and return duplicate copy of letter to this office for record purposes.

Yours very truly,

  
W. R. Allen  
Regional Vice President

Accepted: 

By: 

Date: \_\_\_\_\_

Orig.	cc:	Orig.	cc:
DJD		REG	
RLW		WAH	
GKS		JFK	
RGP		DEE	
JFS		CLT	
RLM		AJO	
<u>TJE</u>		VHP	
JJE		DEN	
P.S.D.			

TERMINATION OF AGREEMENT

WHEREAS, The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, and the City of Saint Paul, a municipal corporation under the laws of the State of Minnesota, have entered into a certain Agreement, dated November 6, 1962, as amended by Amendment to Agreement, dated September 25, 1969, whereby the City was granted the right to use land owned by the said Railroad Company for landfill purposes, subject to certain conditions contained therein; and

WHEREAS, The City has discontinued the landfill at the site, and the parties now wish to formally wish to terminate the above-referenced Agreements;

NOW, THEREFORE, The parties do hereby agree that that certain Agreement referred to above between the parties be and the same is hereby terminated and discontinued, and the premises leased to the City pursuant to said Agreement are hereby returned to the said Railroad Company.

IN WITNESS WHEREOF, The parties have caused this Agreement to be executed as of the            day of            1974.

CHICAGO, MILWAUKEE, ST. PAUL  
& PACIFIC RAILROAD COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

CITY OF SAINT PAUL

By Lawrence J. Baker  
Mayor

Approved as to Form:

Assistant City Attorney

Robert W. Hudson  
Director, Department of Finance  
and Management Services

THIS INDENTURE, Made this 15 day of April, 1975,  
 between the PORT AUTHORITY OF THE CITY OF SAINT PAUL, a public corporation  
 under the laws of the State of Minnesota, Grantor, and the METROPOLITAN  
WASTE CONTROL COMMISSION, a public corporation under the laws of the  
 State of Minnesota, Grantee,

WITNESSETH, That the said Grantor, in consideration of the sum of  
 One Dollar (\$1.00) and other good and valuable consideration to it in  
 hand paid by the said Grantee, the receipt whereof is hereby acknowledged,  
 does hereby Grant, Bargain, Sell and Convey unto the said Grantee, its  
 successors and assigns, forever, all the tract or parcel of land lying  
 and being in the County of Ramsey and State of Minnesota, described  
 as follows, to-wit:

The West 1/2 of the North 54.65 Acres of the South 1/2 of the  
 NW 1/4 of Section 10, T 28 N, R 22 W, Ramsey County, Minn.  
 according to the Gov't survey thereof, except that triangular  
 portion described as follows: beginning at the Southwest  
 corner of said North 54.65 acres, being a point on the West  
 line of said NW 1/4 distant 410.72 feet North of the  
 Southwest corner of said NW 1/4, thence North along the  
 West line of said NW 1/4 a distance of 128.28 feet, thence  
 South 28°59' East a distance of 146.62 feet, thence North  
 89°58' West along the South line of said 54.65 Acres a  
 distance of 71.05 feet to the point of beginning; and

The South 1200 feet of the North 1980 feet of Gov't Lot 1,  
 Section 9, T 28 N, R 22 W, Ramsey County, Minn. lying Easterly  
 of the St. Paul Bridge and Terminal Railway Company right-of-way  
 (now Chicago & North Western Transportation Company right-of-way);  
 and

All that part of the NW 1/4 of the NW 1/4 of Section 10,  
 T 28 N, R 22 W., Ramsey County, Minn., lying Southerly of  
 the following described line: commencing at the Northwest  
 corner of said NW 1/4, thence South along the West line of  
 said NW 1/4 a distance of 780 feet to the point of beginning  
 of the described line, thence South 60° East a distance of  
 746.0 feet, thence North 89°56'45" East a distance of 668.06  
 feet, more or less, to a point on the East line of said NW 1/4  
 of NW 1/4 and there terminating; and

All that part of the East 1/2 of the North 54.65 Acres of the  
 South 1/2 of the NW 1/4 of Section 10, T 28 N, R 22 W, Ramsey  
 County, Minn., lying Westerly of the following described line:  
 beginning at a point on the North line of the South 1/2 of  
 the NW 1/4 distant 200 feet Easterly of the West line of the  
 NW 1/4 of said NW 1/4, thence Southwesterly to a point on  
 the South line of the said North 54.65 Acres distant 150 feet  
 Easterly of the West line of the East 1/2 of said NW 1/4.

All contains 39.7 acres, more or less.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the said Grantee, its successors and assigns, Forever, subject to mineral rights and easements of record; and the said Grantor, for itself and its successors, does covenant with the said Grantee, its successors and assigns, that it is well seized in fee of the lands and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid, and that the same are free from all encumbrances other than herein specified. And the above bargained and granted lands and premises, in the quiet and peaceable possession of the said Grantee, its successors and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, subject to encumbrances, if any, hereinbefore mentioned, the said Grantor will Warrant and Defend.

IN TESTIMONY WHEREOF, the Grantor has caused these presents to be executed in its corporate name by its President and its Secretary and its corporate seal to be hereunto affixed the day and year first above written.

In Presence of

Barbara Brown

Marta K. Sebell

PORT AUTHORITY OF  
THE CITY OF SAINT PAUL

BY

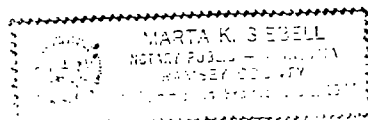
John L. Segl  
President

BY

Louis H. Meyer  
Secretary

STATE OF MINNESOTA) ss.  
COUNTY OF RAMSEY )

On this 15 day of April, 1975, before me, a notary public within and for said County, personally appeared John L. Segl and Louis H. Meyer, to me personally known, who, being each by me duly sworn, did say that they are respectively the President and Secretary of the Port Authority of the City of St. Paul, the public corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said John L. Segl and Louis H. Meyer acknowledged said instrument to be the free act and deed of said corporation



Marta K. Sebell  
Notary Public, Ramsey Co., Minn.  
My commission expires \_\_\_\_\_

Corporation, or Partnership  
to Corporation or Partnership

Open Space Land.

00928

No delinquent taxes and transfer entered; Certificate  
of Real Estate Value ( ) filed ( ) not required  
Certificate of Real Estate Value No. \_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_

County Auditor

by \_\_\_\_\_

Deputy

STATE DEED TAX DUE HEREON: ~~THIS DEED IS EXEMPT FROM STATE DEED~~  
TAX UNDER MINN. STAT. SEC. 287.22(F):

Date: May 4, 1984

(reserved for recording data)

FOR VALUABLE CONSIDERATION, Port Authority of the City of Saint Paul  
\_\_\_\_\_, a corporation under the laws of  
Minnesota, Grantor, hereby conveys and quitclaims to City of Saint Paul  
\_\_\_\_\_, Grantee,  
a municipal corporation under the laws of Minnesota, real property in  
Ramsey County, Minnesota, described as follows:

See Exhibit A attached hereto

Except for riparian rights connected with and appurtenant thereto,  
which are reserved by grantor.

(if more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto.

PORT AUTHORITY OF THE CITY OF SAINT PAUL

By [Signature]  
Its President  
By [Signature]  
Its Asst. Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

ss.

The foregoing was acknowledged before me this 4th day of May, 1984,  
by George Winter and Jean M. West,  
the \_\_\_\_\_ and \_\_\_\_\_  
of Port Authority of the City of Saint Paul, a corporation  
under the laws of Minnesota, on behalf of the Port Authority.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should  
be sent to (Include name and address of Grantee):

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Terrence J. Garvey  
Assistant City Attorney  
647 City Hall & Court House  
Saint Paul, MN 55102

I hereby certify that this instrument is duly executed and  
payment of fees. Pursuant to Law No. 124, Chapter 124, of the  
of The Port Authority of The City of Saint Paul,  
CITY OF SAINT PAUL

BY \_\_\_\_\_

EXHIBIT A

All that part of the North 1/2 of the Northwest quarter of Section 10, Township 28 North, Range 22 West lying Southwesterly of a straight line extending from the Northwest corner to the Southeast corner of said North 1/2 of the Northwest quarter except that part of the Northwest quarter of the Northwest quarter of said Section 10, lying Southerly of the following described line: Commencing at the Northwest corner of said Northwest quarter, thence South along the West line of said Northwest quarter a distance of 780 feet to the point of beginning of the described line, thence South 60 degrees East a distance of 746.0 feet, thence North 89 degrees 56 minutes 45 seconds East a distance of 668.06 feet, more or less, to a point on the East line of said Northwest quarter of Northwest quarter and there terminating. Certificate No. 264319.

The East 1/2 of the North 54.65 acres of the South 1/2 of the Northwest quarter of Section 10, Township 28, Range 22, lying Easterly of the following described line: Beginning at a point on the North line of the South 1/2 of the Northwest quarter distant 200 feet Easterly of the West line of the East 1/2 of said Northwest quarter, thence Southwesterly to a point on the South line of the said North 54.65 acres distant 150 feet East of the West line of the East 1/2 of said Northwest quarter. Certificate No. 264319.

All that part of the East 1/2 of the Northwest quarter of Section 14, Township 28 North, Range 22 West which lies Westerly of a line 250 feet Westerly, measured at right angles, from the centerline of Grantor's main track. Certificate No. 264319.

The location of the aforesaid centerline of the Grantor's main track in said Sections 23, 14 and 11 is described as follows: Beginning at a point on the South line of the Southeast quarter of said Section 23 at a distance of 1752 feet East of the Southwest corner thereof and extending thence Northwesterly on a straight line forming an angle of 76 degrees 10 minutes with said South line of the Southeast quarter a distance of 5047.6 feet to the beginning of a curve to the right with a radius of 11,459.2 feet; thence along said curve 298.4 feet to its intersection with the North line of the West 1/2 of the Northeast quarter of said Section 23, distant 2134.3 feet West of the Northeast corner of said section; thence Northwesterly and continuing along said curve to the right a distance of 31.6 feet; thence Northwesterly on a straight line tangent to said curve 2520.7 feet; thence Northwesterly along a curve to the right with a radius of 5927.2 feet, a distance of 553.45 feet; thence Northwesterly on a straight line tangent to the curve last mentioned, a distance of 405.27 feet; thence Northwesterly on a curve to the left with a radius of 5729.6 feet, a distance of 1203.33 feet; thence Northerly on a straight line tangent to the curve last mentioned, a distance of 1022.4 feet; thence Northerly on a curve to the left with a radius of 5729.6 feet, a distance of 1378.33 feet; thence Northwesterly on a straight line tangent to the curve last mentioned, a distance of 2657.32 feet to its intersection with the West line of said Section 11 at a point distant 134.6 feet South from the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 11.

Reserving, however, unto the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, its successors and assigns, the right to encroach with embankment fill slopes on or upon those portions of the above described property that adjoin the Northeasterly and Easterly boundaries of the property herein conveyed. See Document No. 459562. Certificate No. 264319.

The Southwest quarter of the Southeast quarter of Section 10, Township 28, Range 22. Certificate No. 258687.

All that part of the following described property:

The Northwest quarter of the Northwest quarter of Section 23, Township 28, Range 22. Certificate No. 285483.

Which lies Westerly of the following described line:



Beginning at a point on the South line of said Northwest 1/4 of the Northwest 1/4 that is 384.07 feet East of the Southwest corner, thence North 14°42' West for 1370.89 feet to a point on the North line of the Northwest 1/4 of the Northwest 1/4 that is 33.14 feet East of the Northwest corner and there terminating.

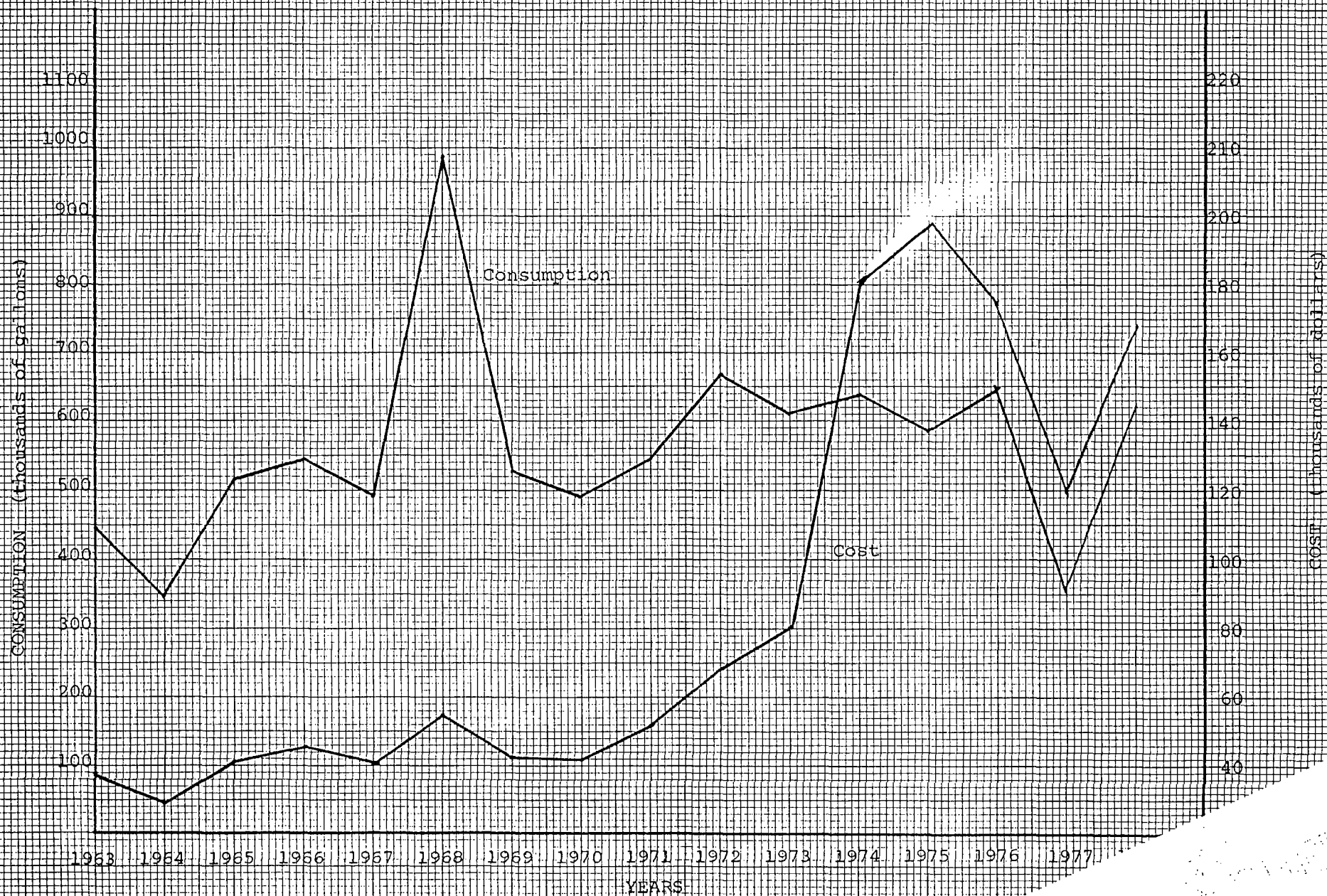
All that part of the following described property:

Government Lot 1 in Section 23, Township 28, Range 22. Certificate No. 292231.

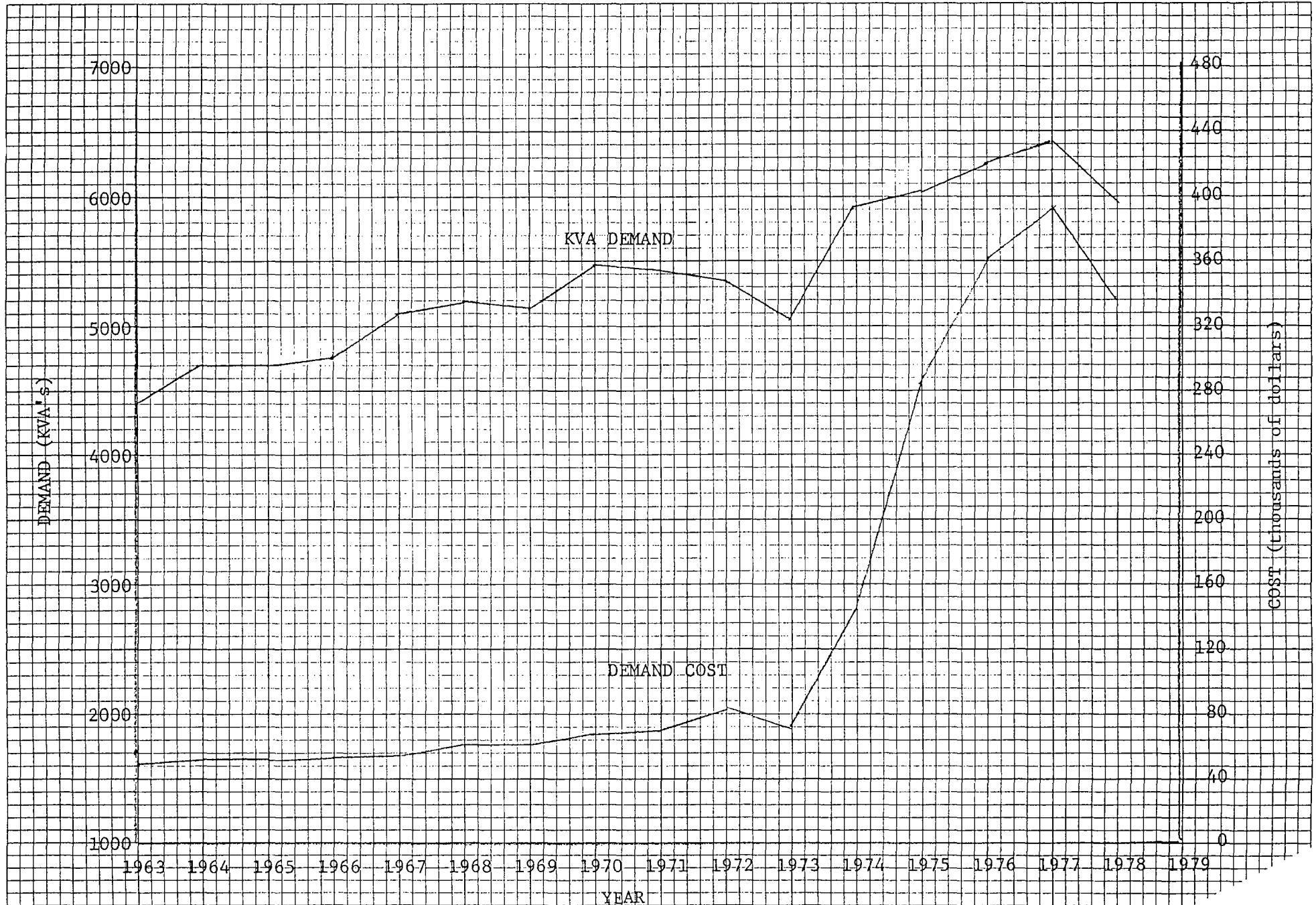
Which lies Westerly of the following described line:

Commencing at the Northwest corner of Gov't Lot 1, Section 23, thence North 89°43' East, along the North line of said Gov't Lot 1, for 730.31 feet to the point of beginning of the line to be described, thence South 14°42' East for 1328.74 feet more or less to a point on the South line of said Government Lot 1 that is 230.03 feet West of the Southeast corner and there terminating.

#6 FUEL OIL CONSUMPTION & COST



# ELECTRIC POWER DEMAND & COSTS



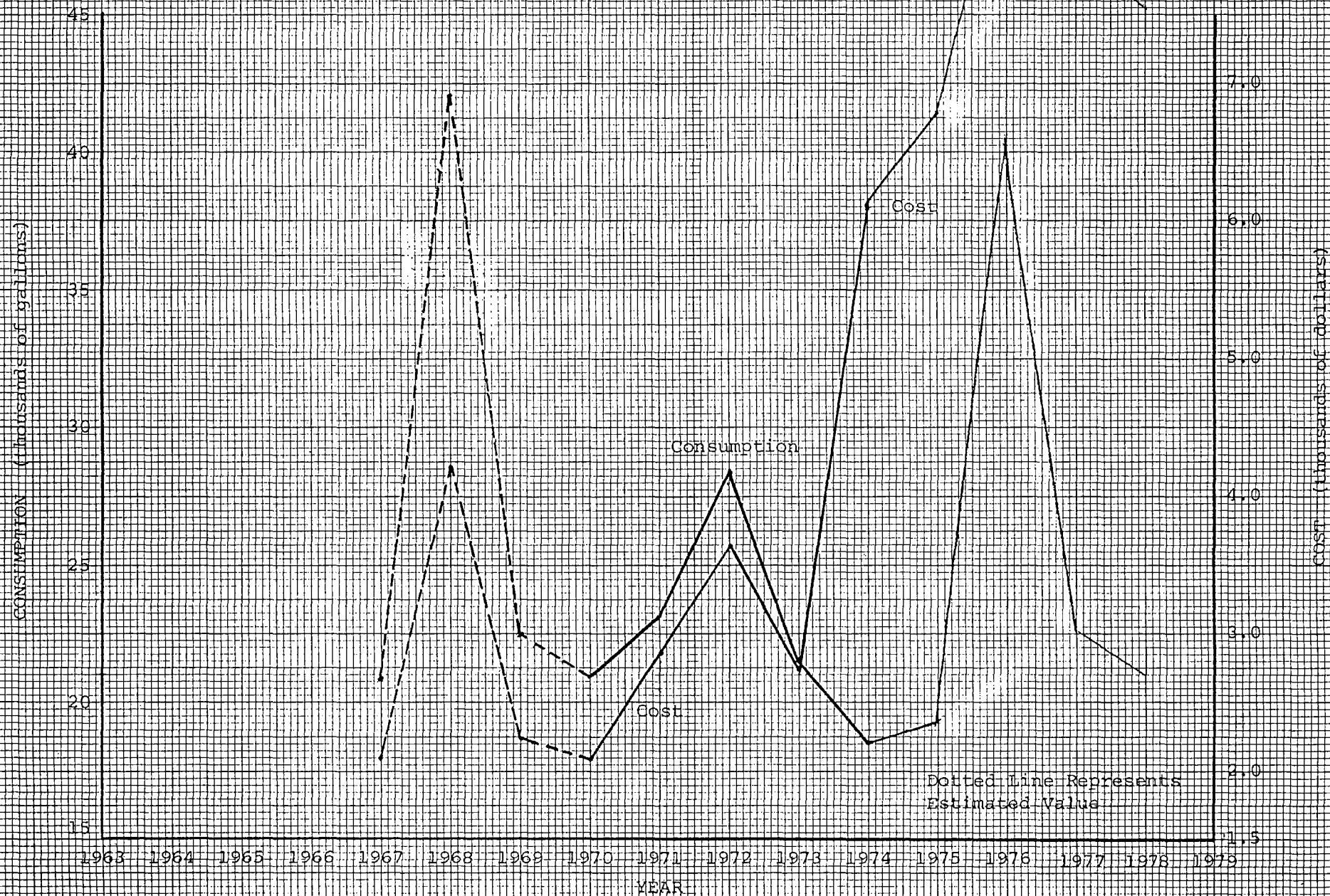
00932

## STEAM CONSUMPTION &amp; COST



00933

#2 FUEL OIL CONSUMPTION & COSTS



STUPKA  
5-23-75

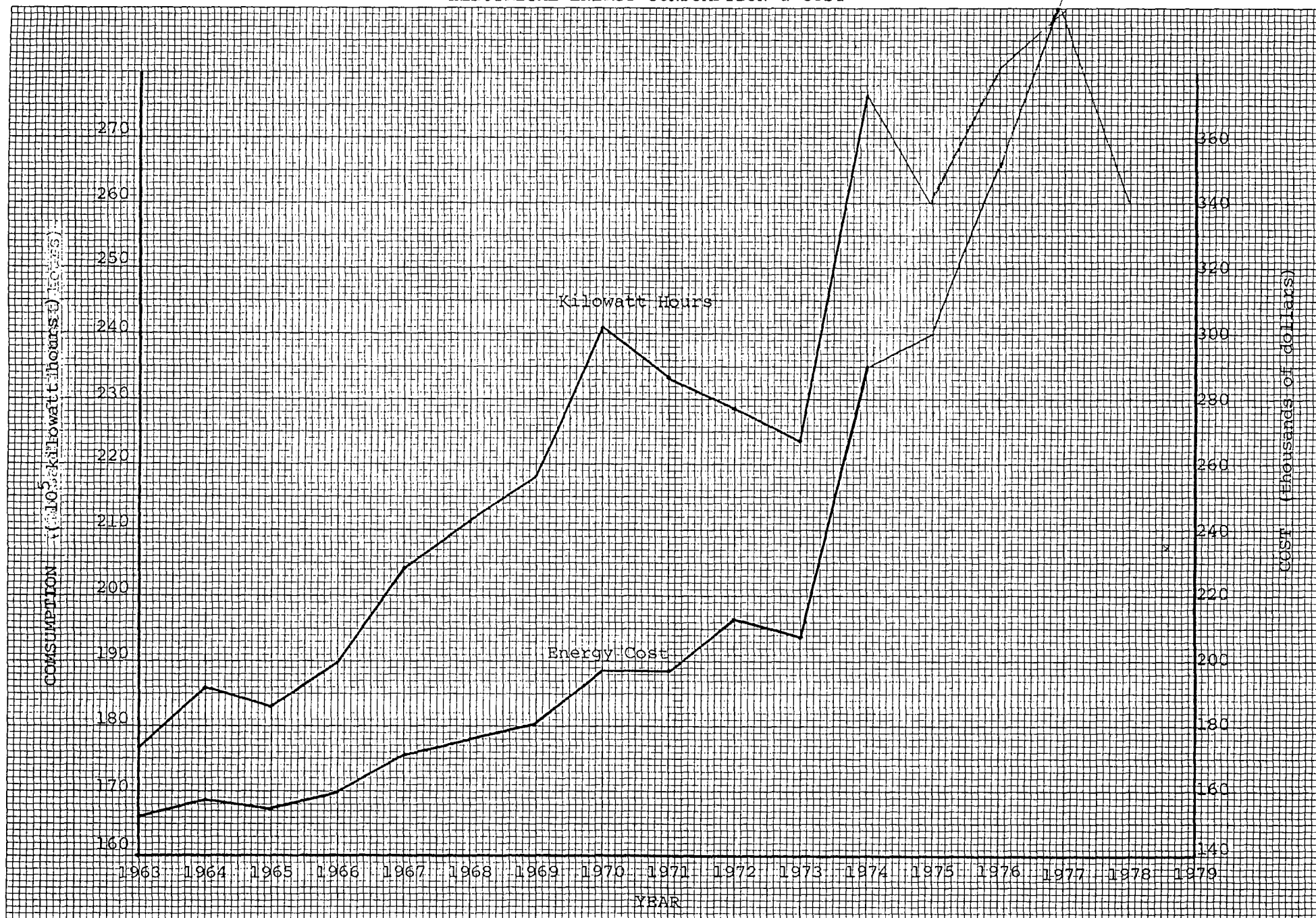
00934

00935

10 X 10 PER HALF INCH

DIEZGEN CORPORATION  
MADE IN U.S.A.

## ELECTRICAL ENERGY CONSUMPTION &amp; COST

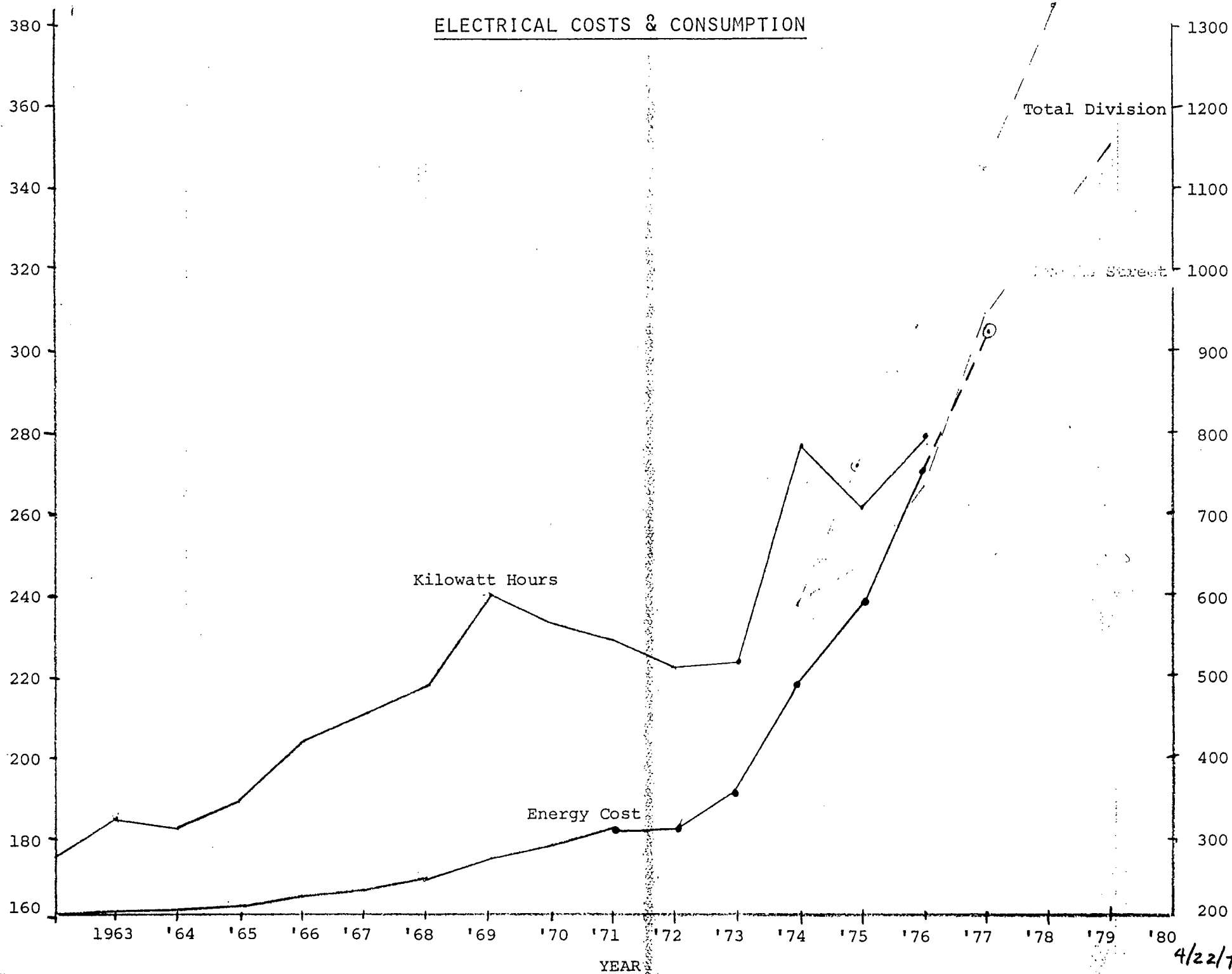
STUPKA  
5-22-77



# ELECTRICAL COSTS & CONSUMPTION

00936

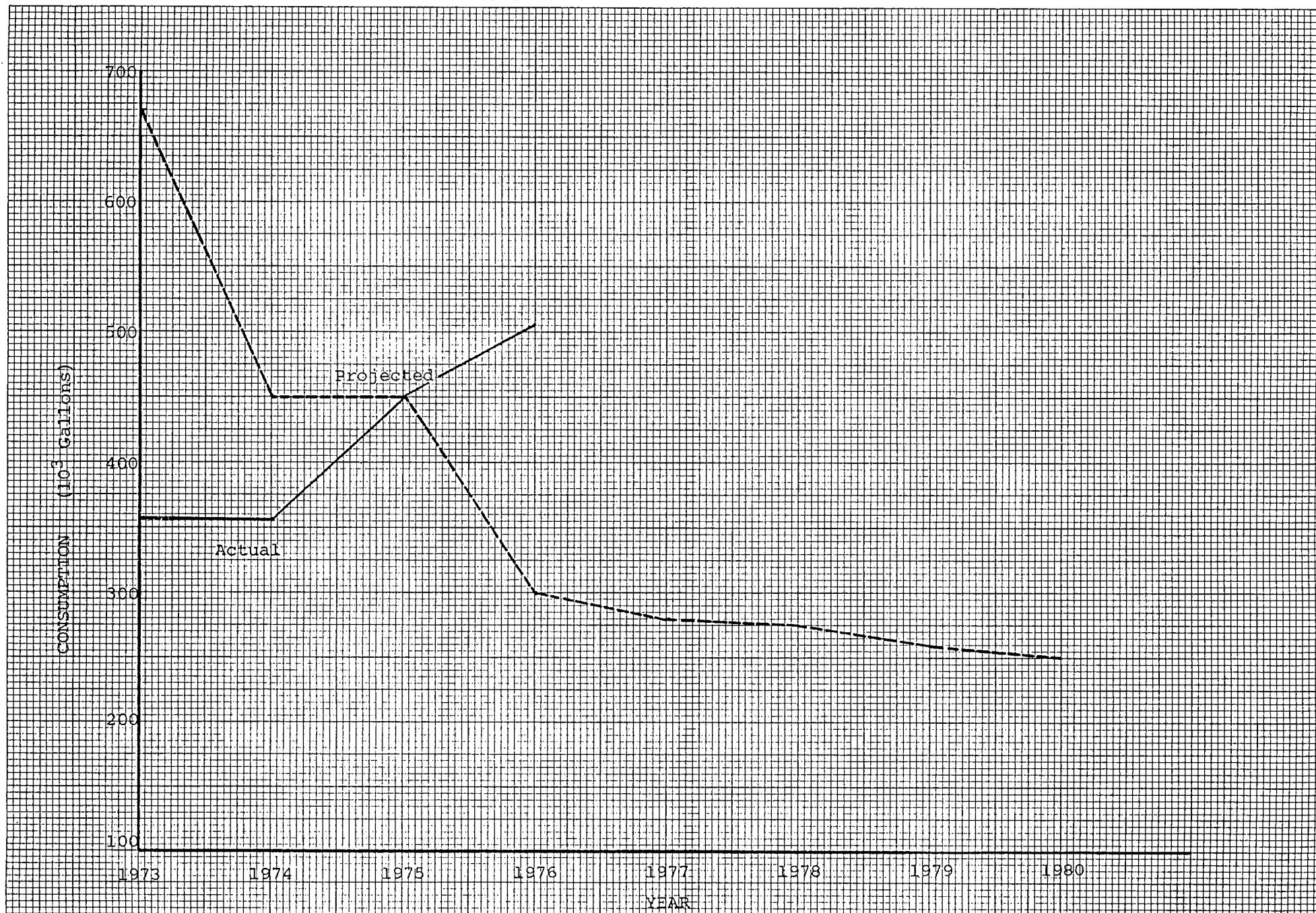
CONSUMPTION  $10^5$  KW-HOURS



NET COST IN THOUSANDS OF DOLLARS

4/22/76

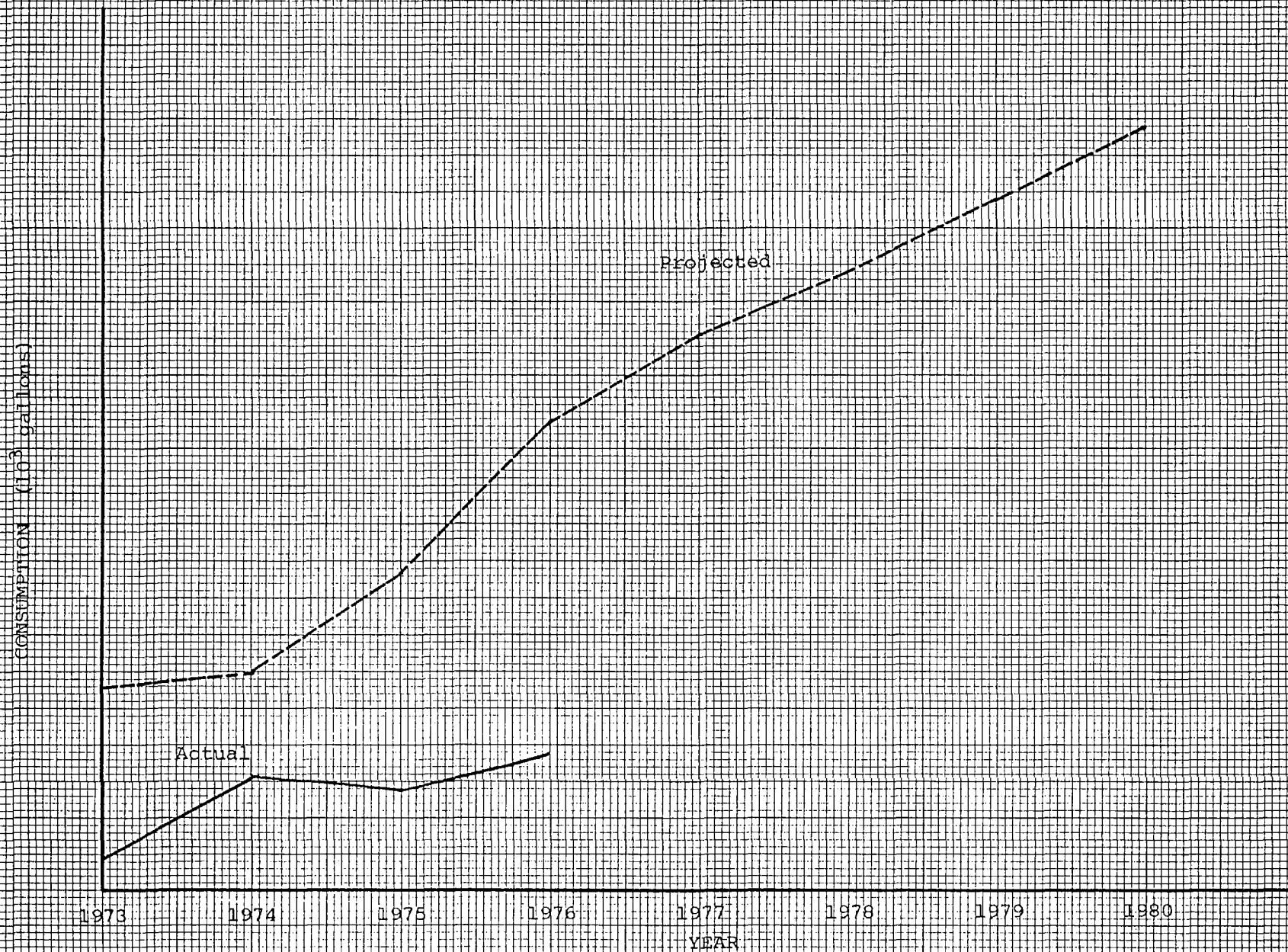
PROPANE = PROJECTED & ACTUAL CONSUMPTION



00937

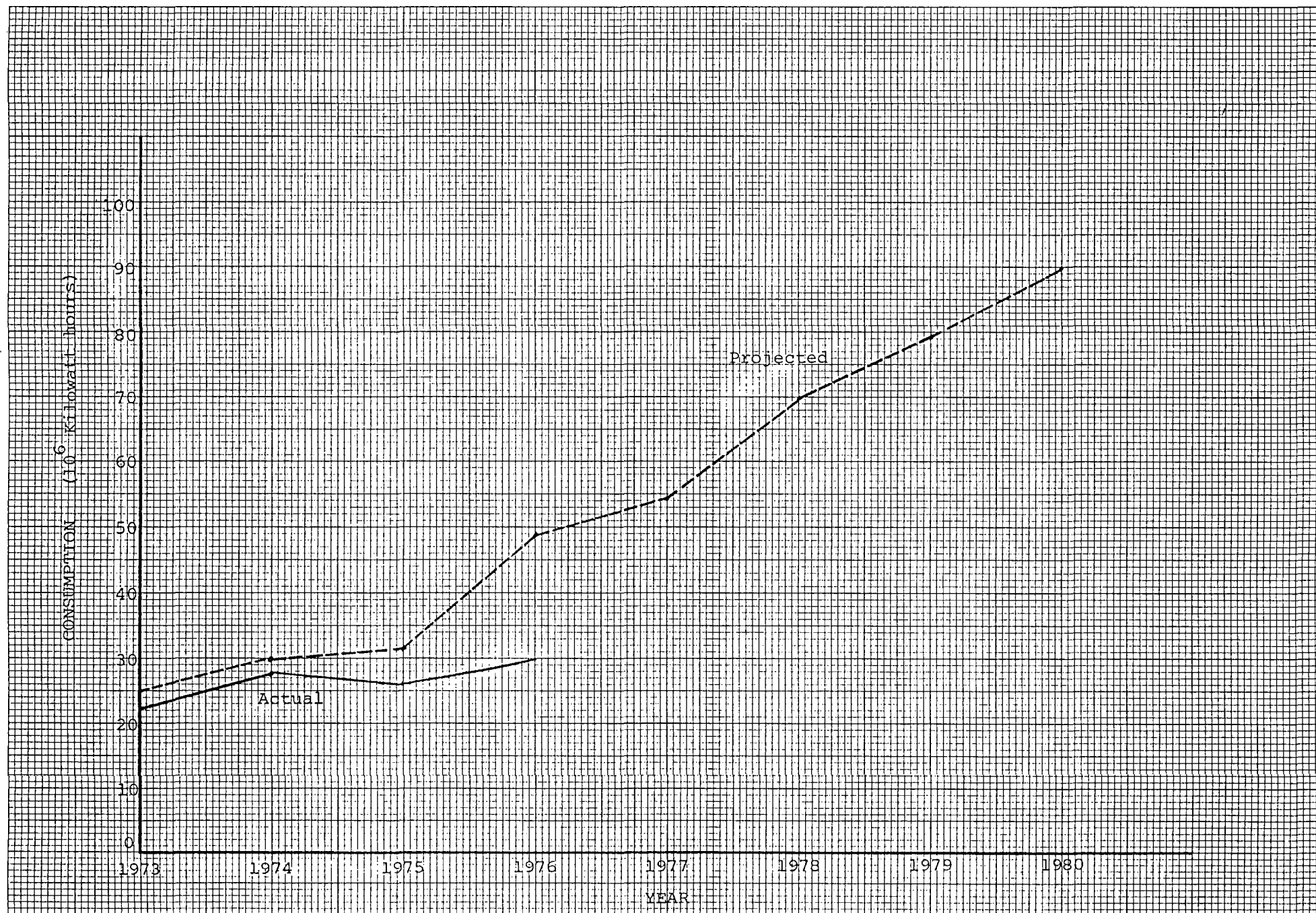


#6 FUEL OIL PROJECTED & ACTUAL



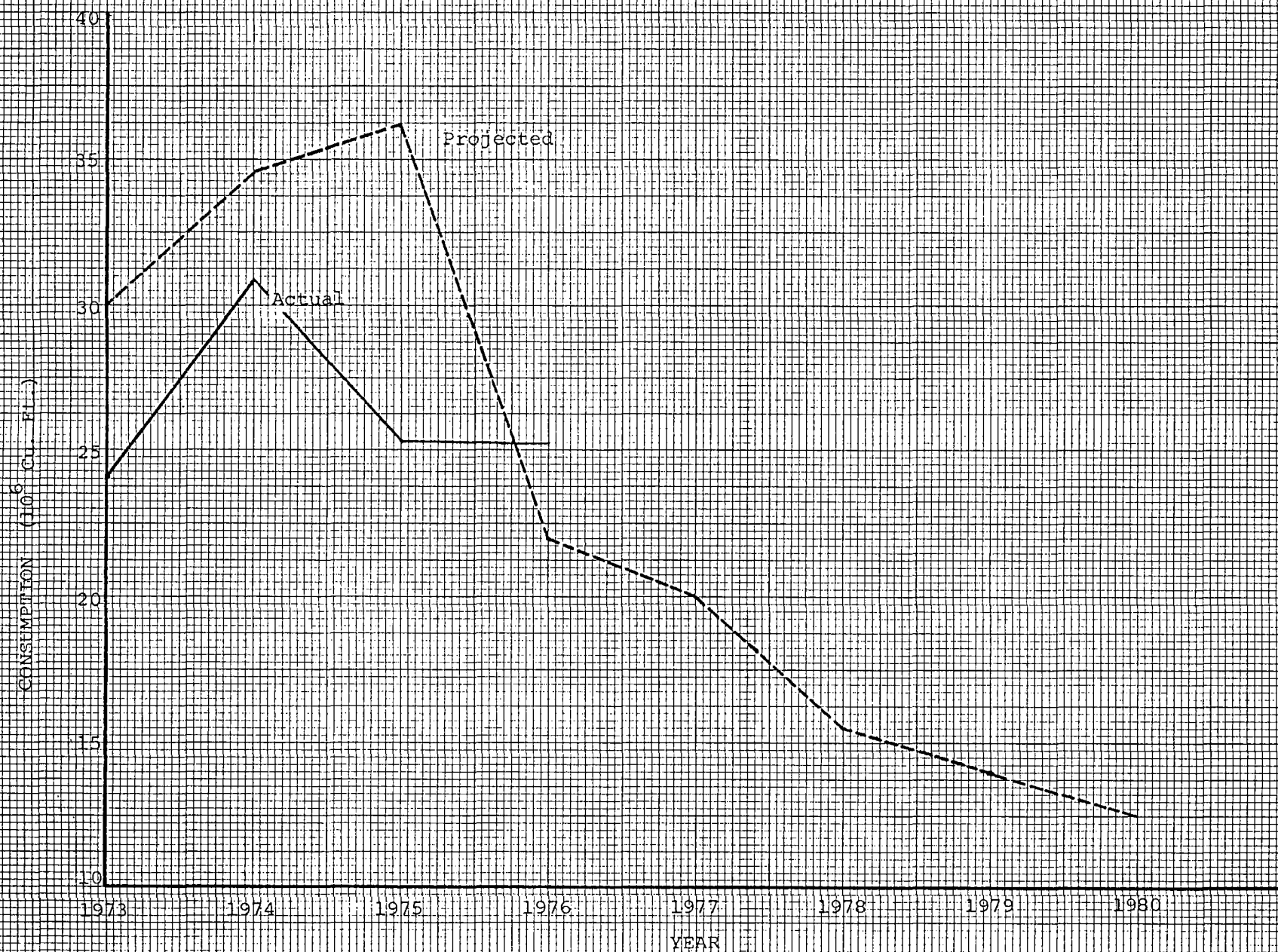
00938

ELECTRICITY = PROJECTED & ACTUAL CONSUMPTION



00939

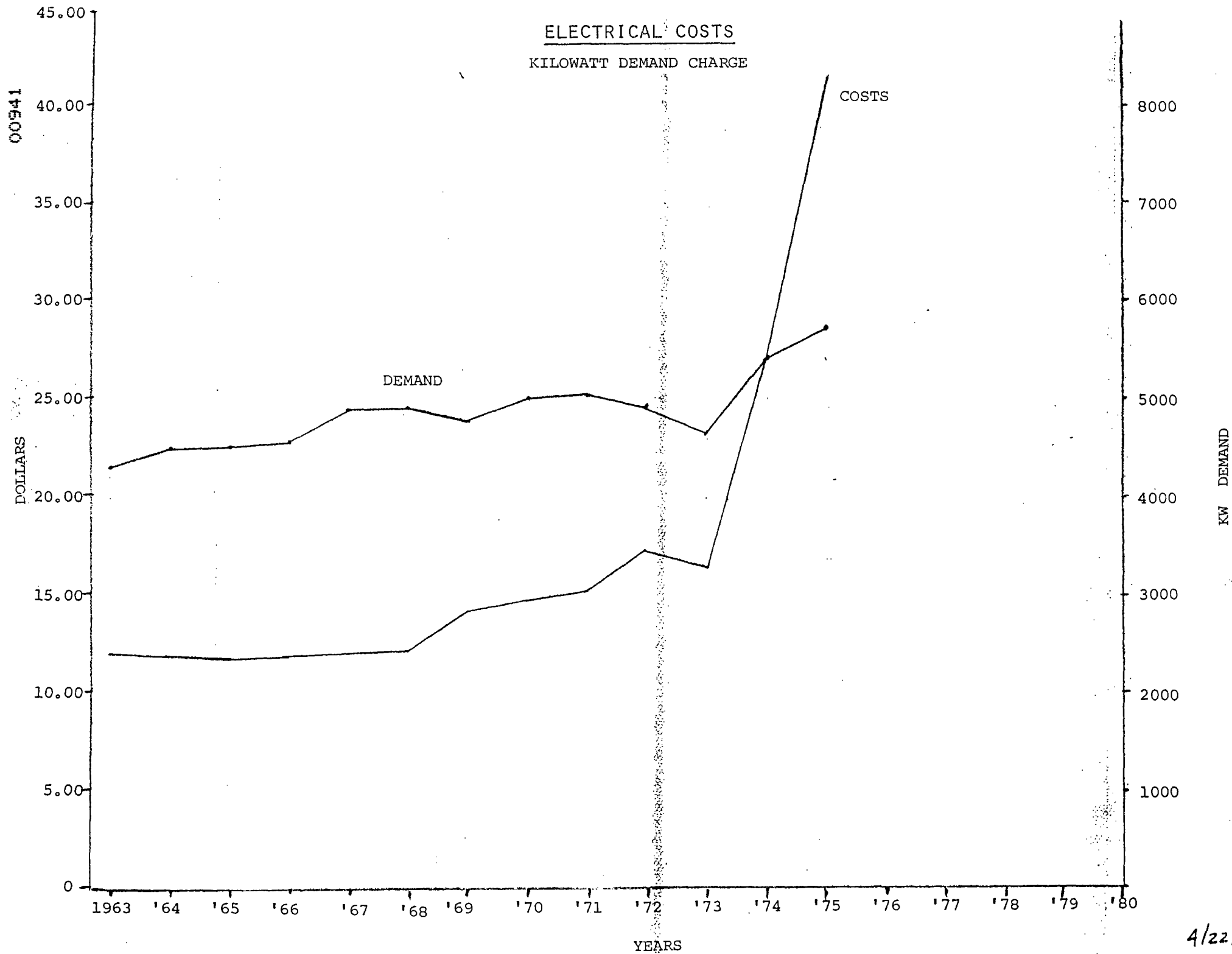
NATURAL GAS (Interruptable) PROJECTED & ACTUAL CONSUMPTION



00340

# ELECTRICAL COSTS

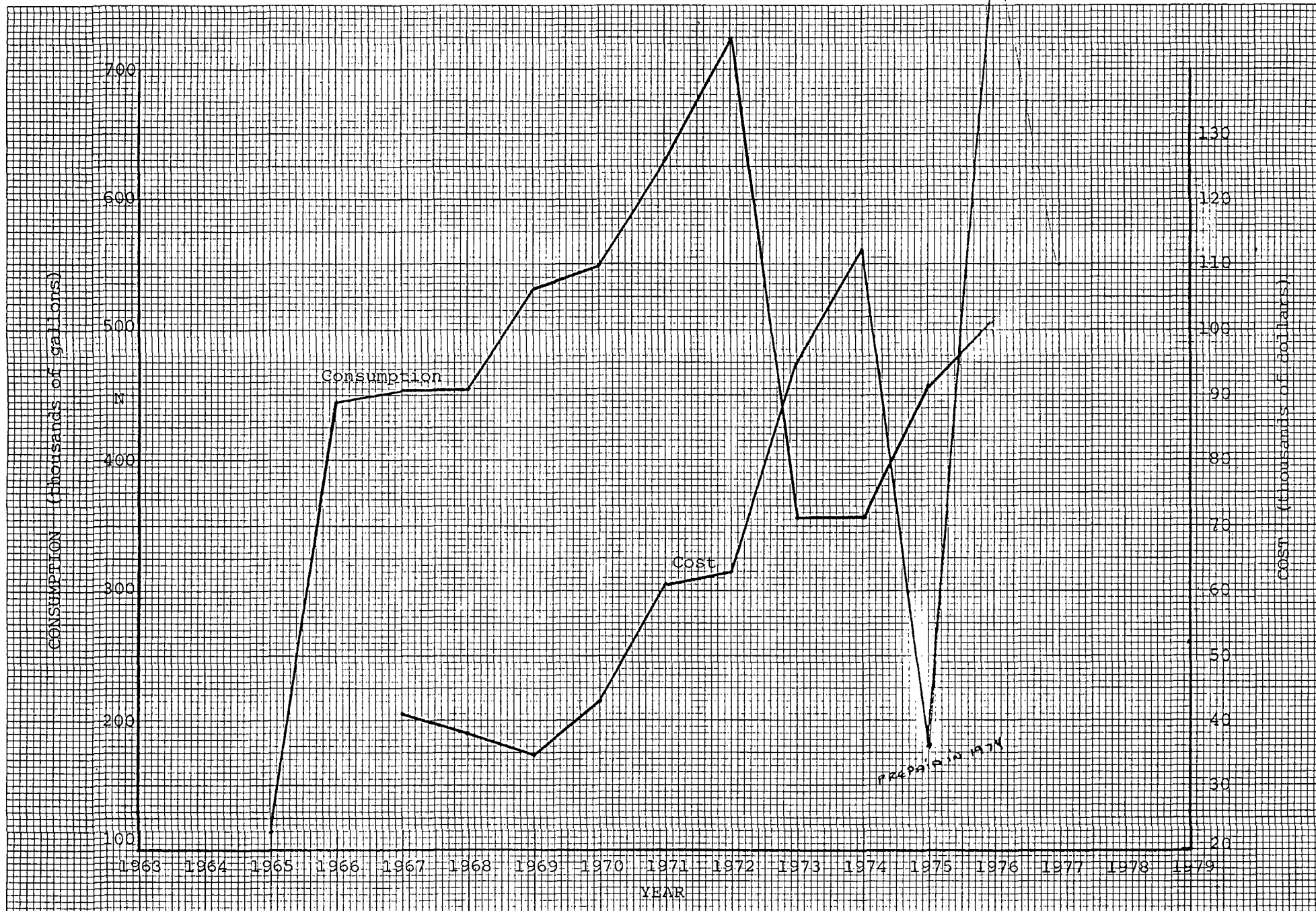
KILOWATT DEMAND CHARGE



4/22/71

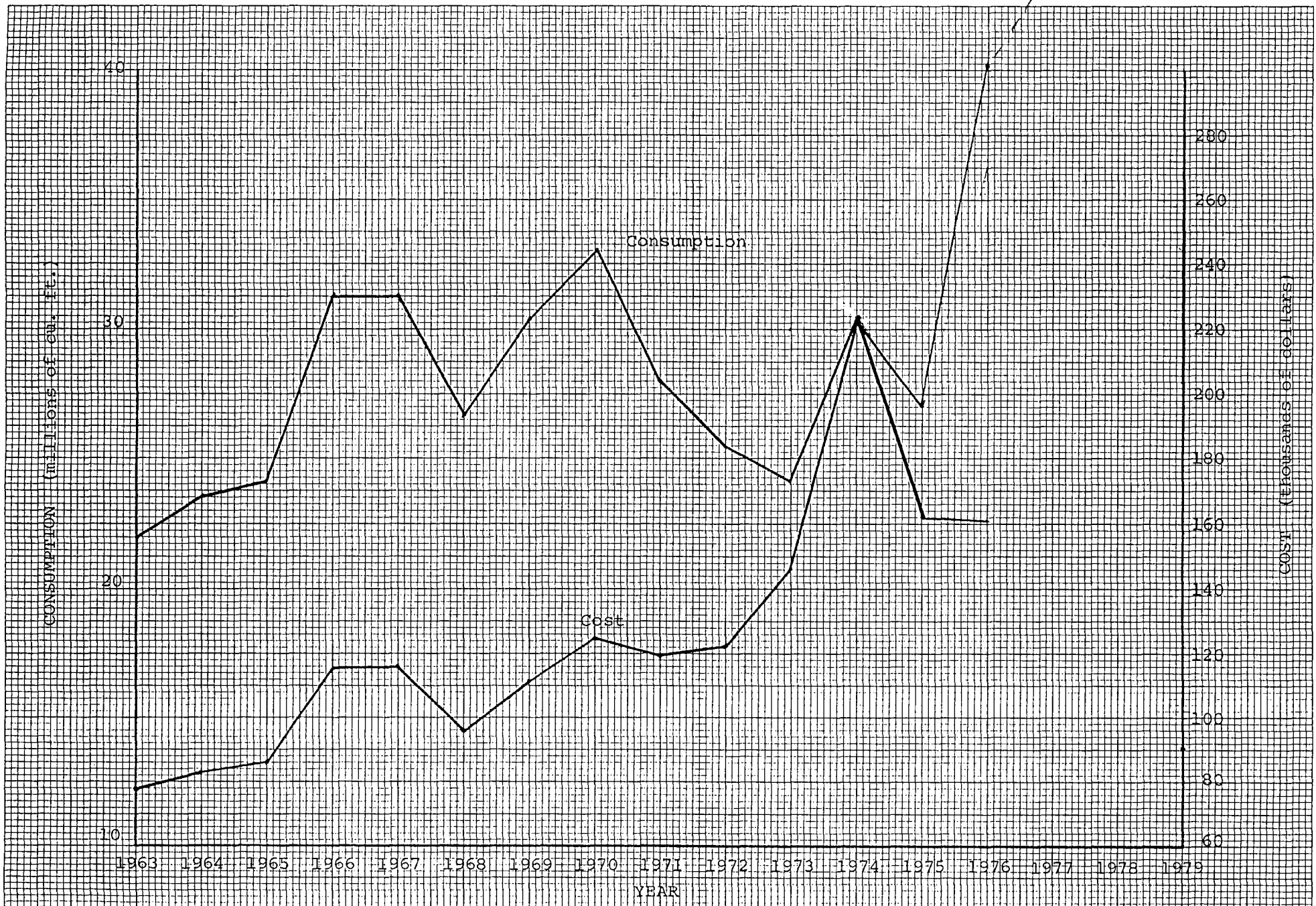
00942

## PROPANE CONSUMPTION &amp; COST

STUPKA  
5-22-75



INTERRUPTABLE GAS CONSUMPTION & COST



STUPKA  
5-23-75

00943

# ELECTRICAL USAGE

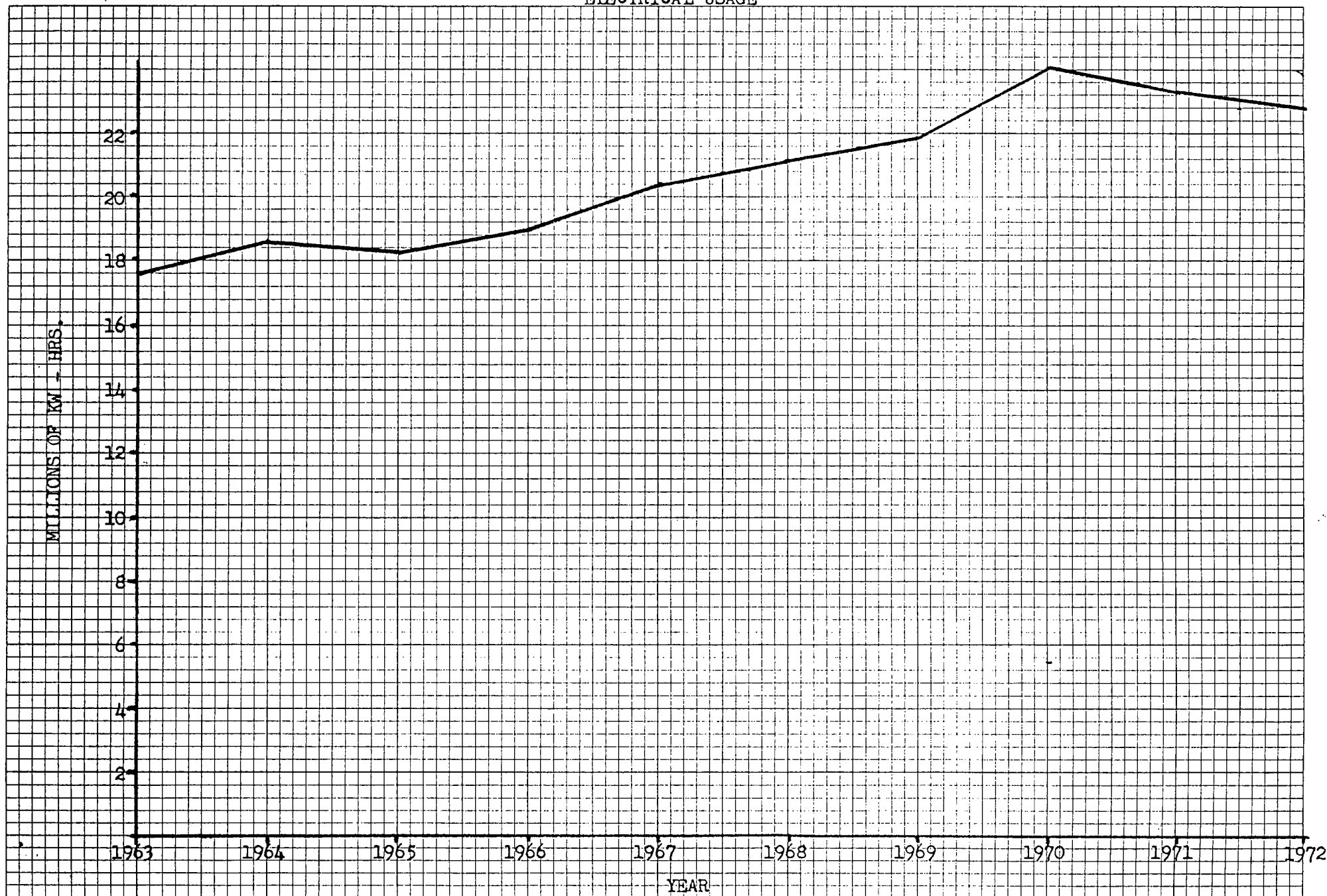
MILLIONS OF KW - HRS.

22  
20  
18  
16  
14  
12  
10  
8  
6  
4  
2

1963 1964 1965 1966 1967 1968 1969 1970 1971 1972

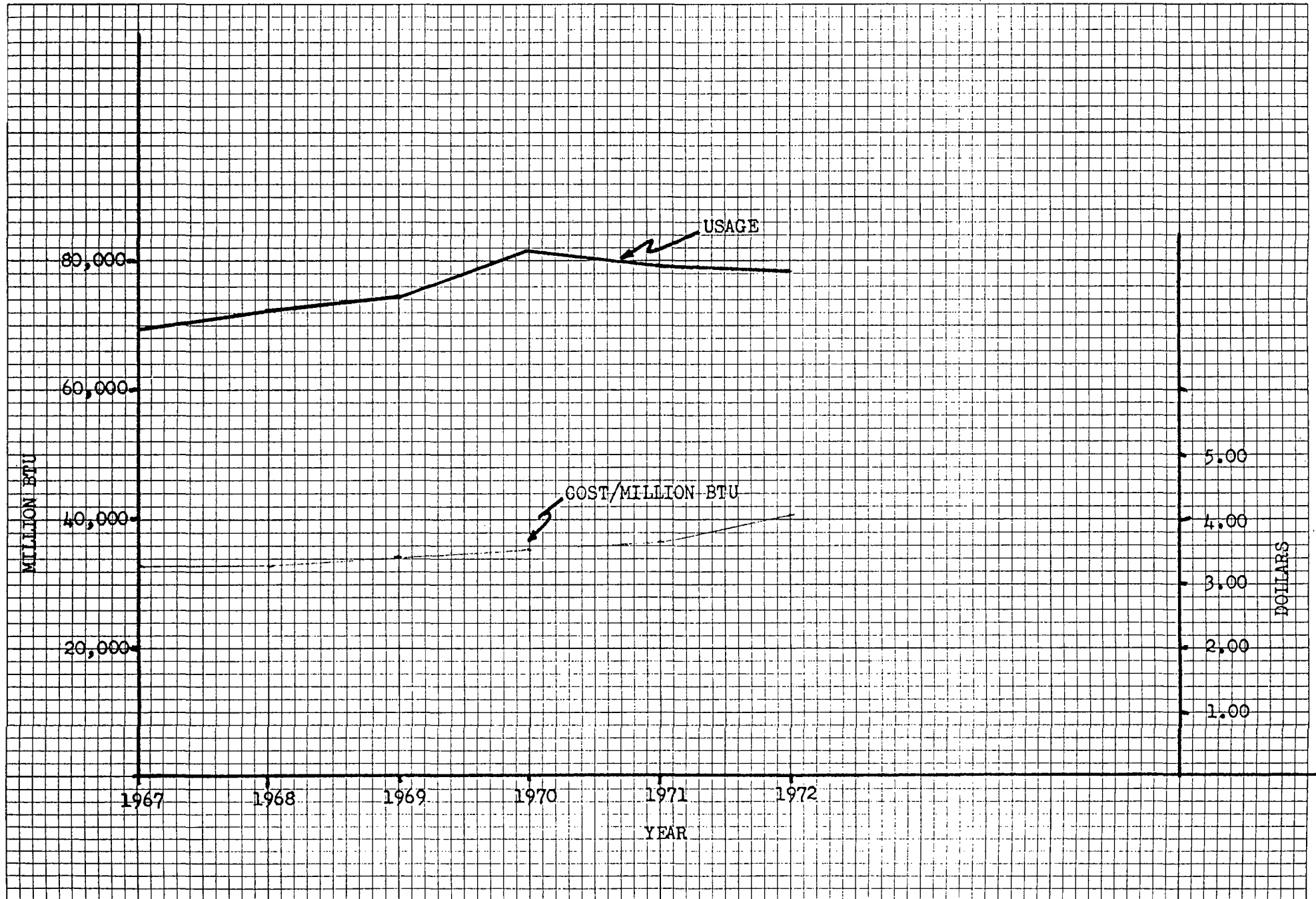
YEAR

00944



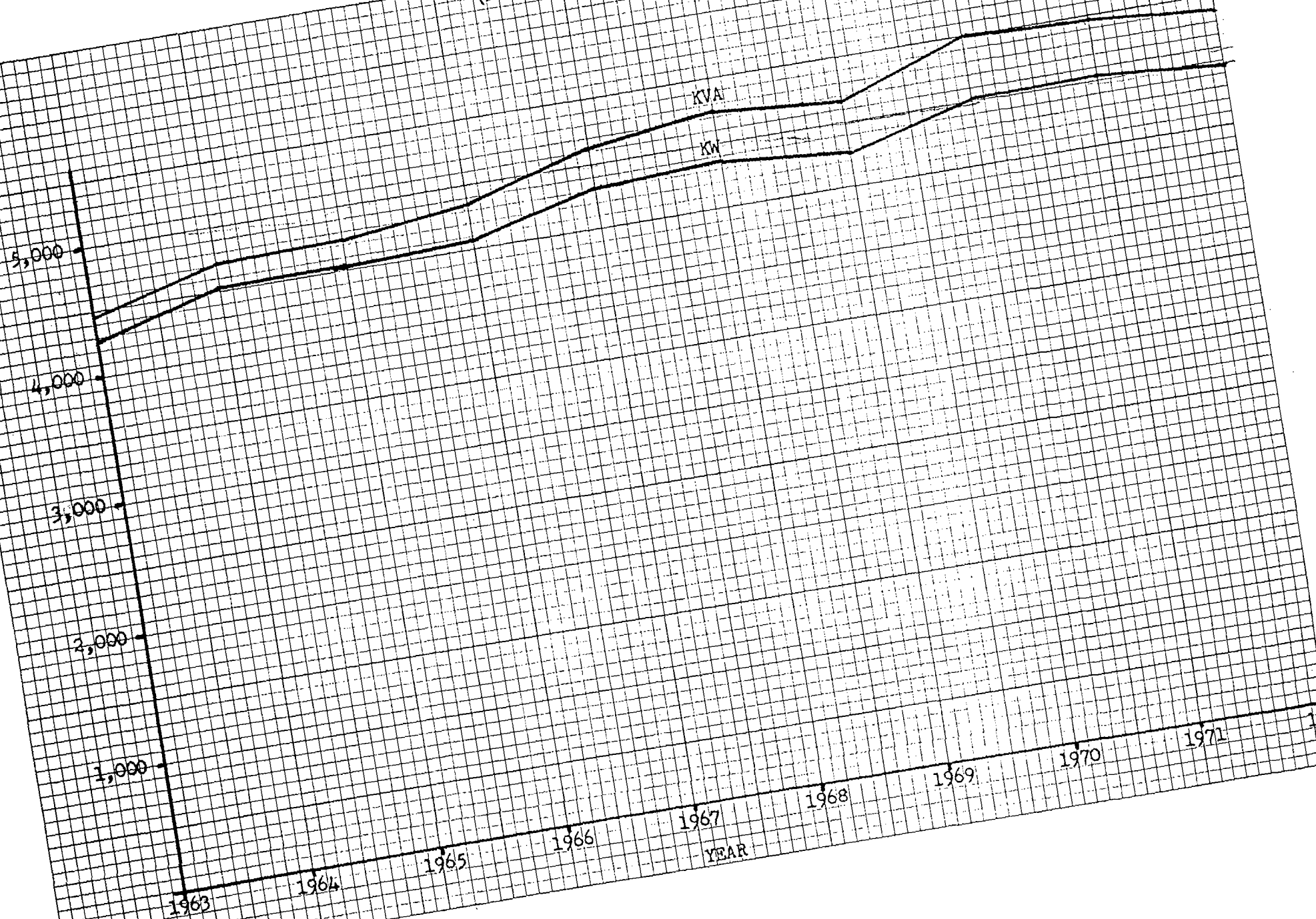
# ELECTRICAL USAGE AND COSTS

00945

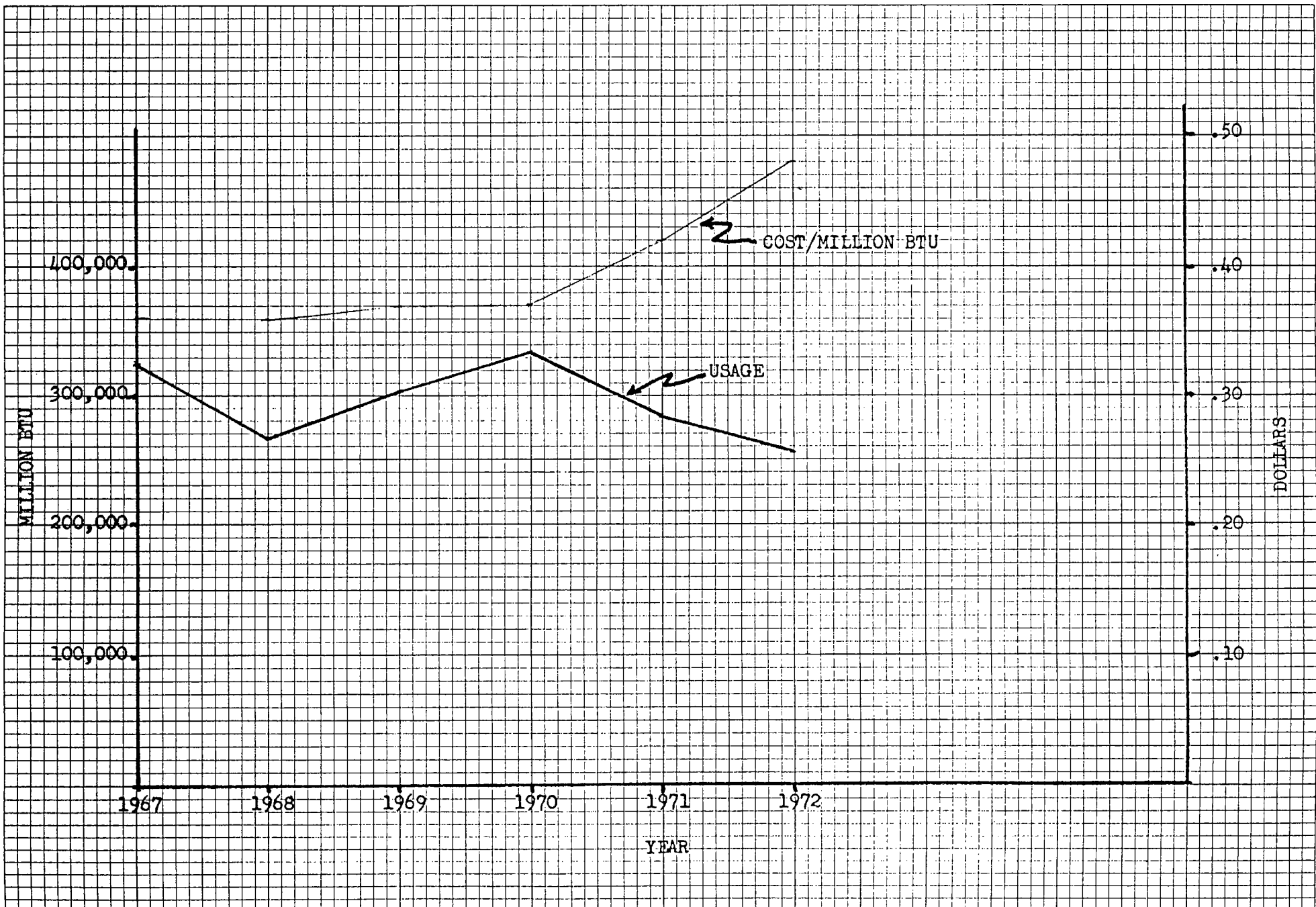




# ELECTRICAL POWER DEMAND (MONTHLY AVERAGE)



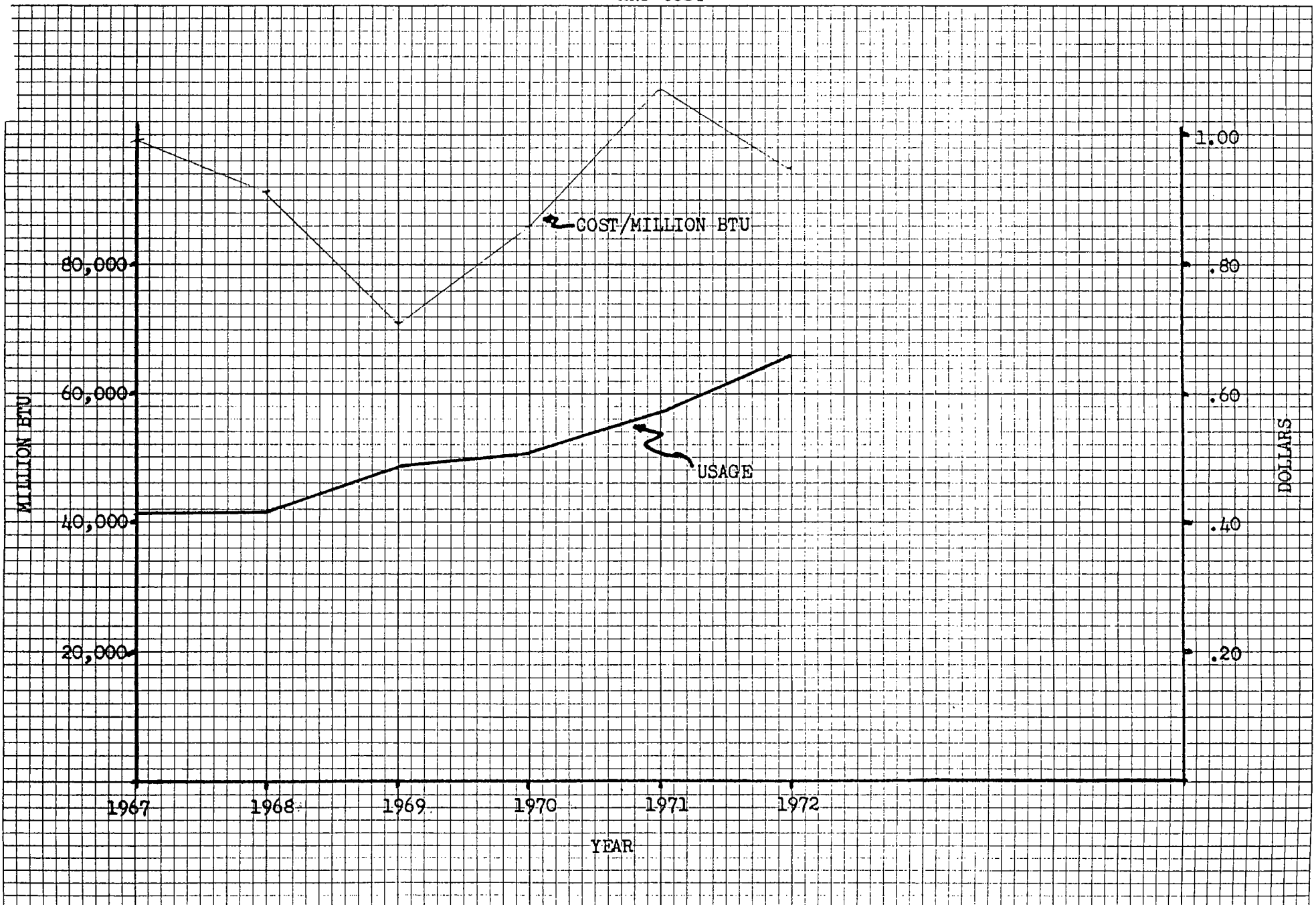
# NATURAL GAS USAGE AND COSTS



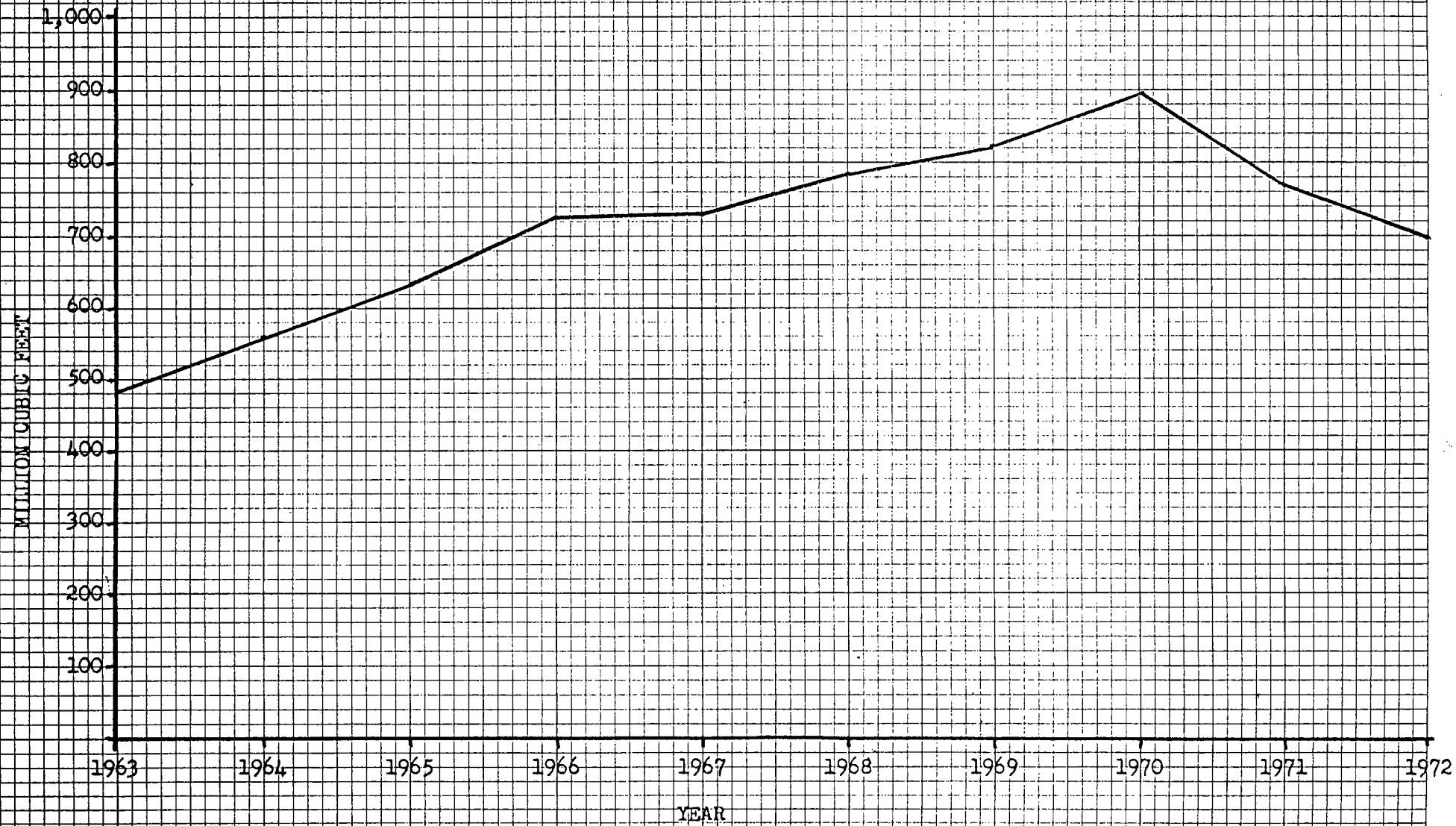
00947

LPG USAGE  
AND COST

00548



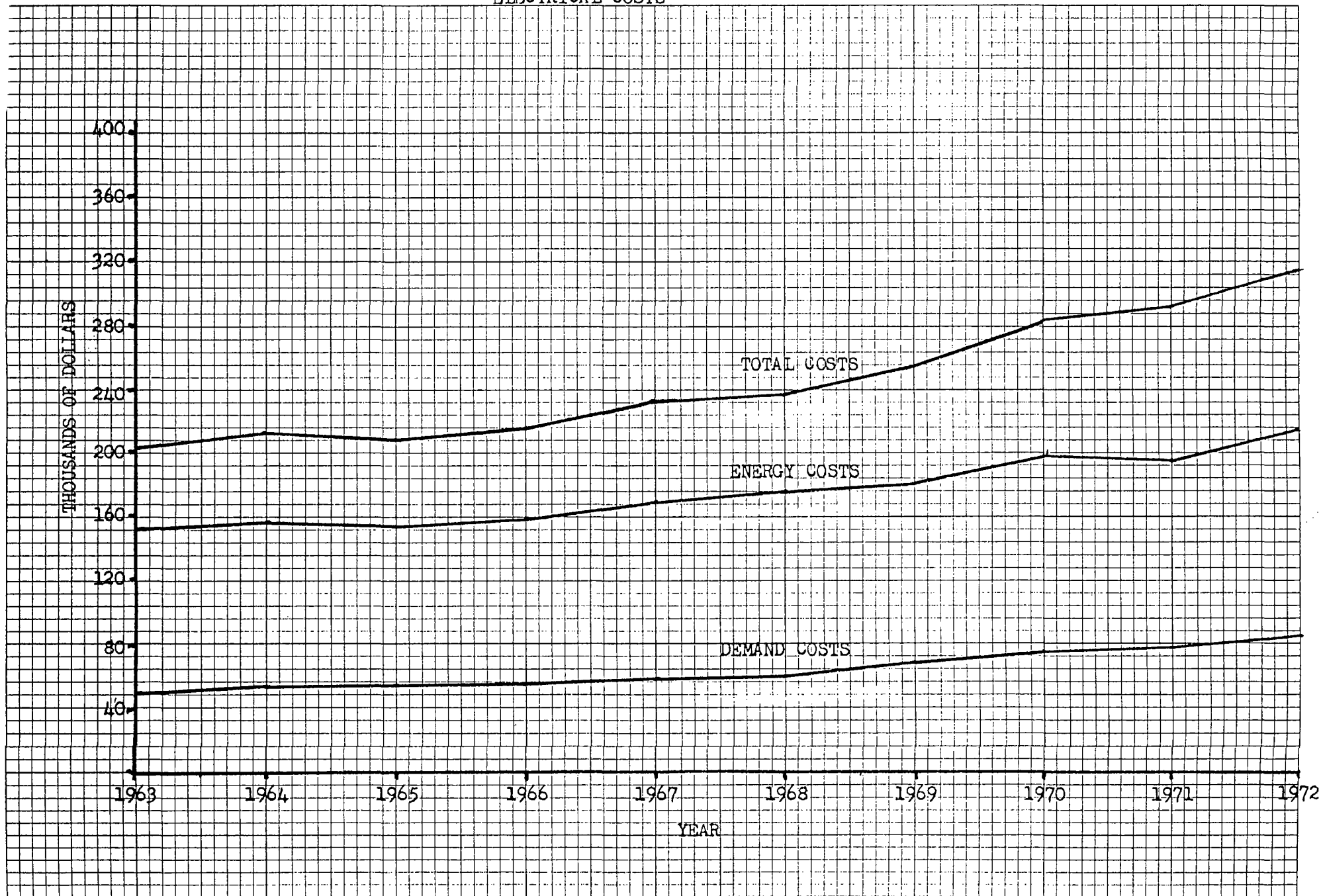
# AIR USAGE



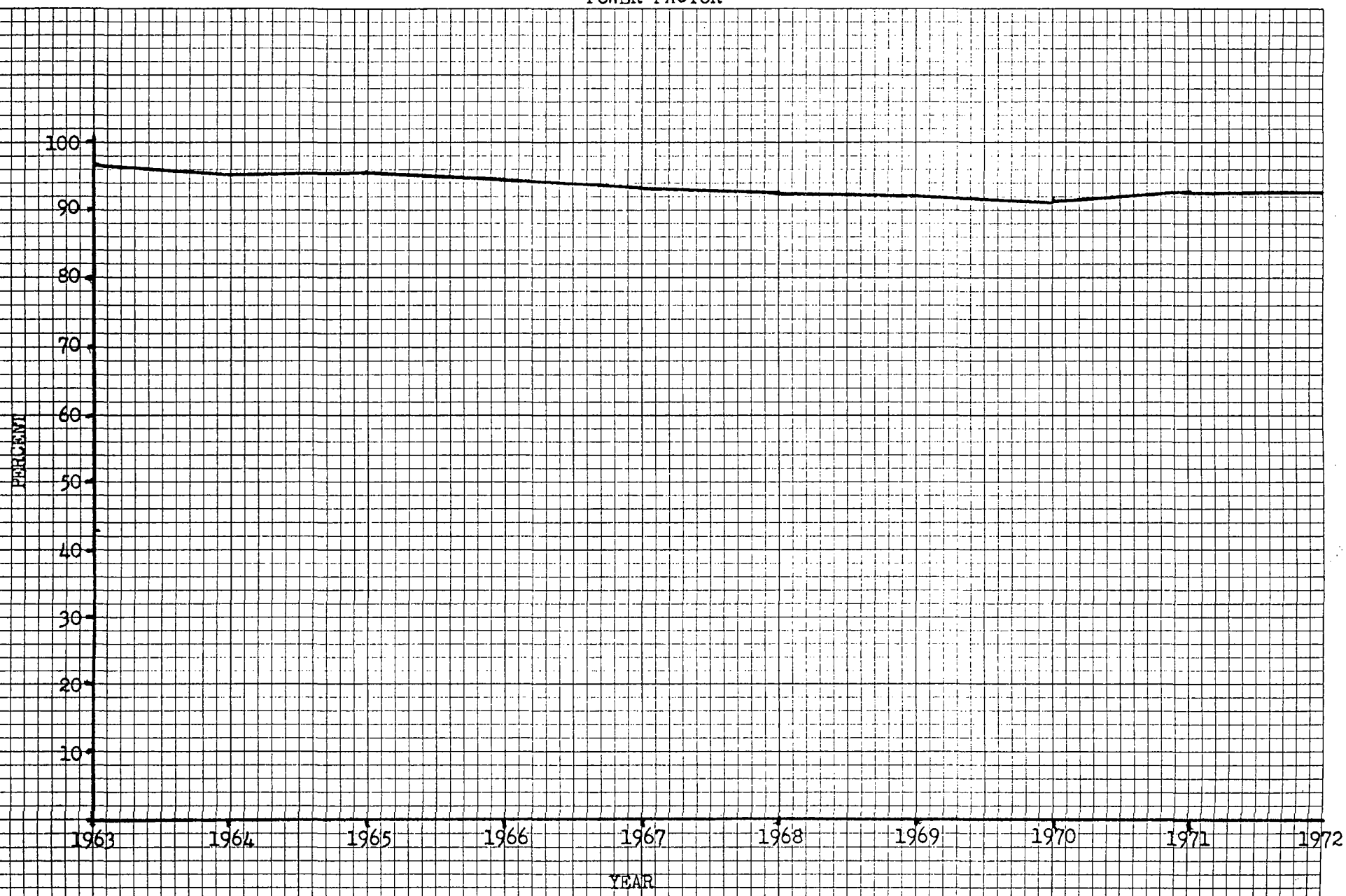
00949

# ELECTRICAL COSTS

00950



# POWER FACTOR

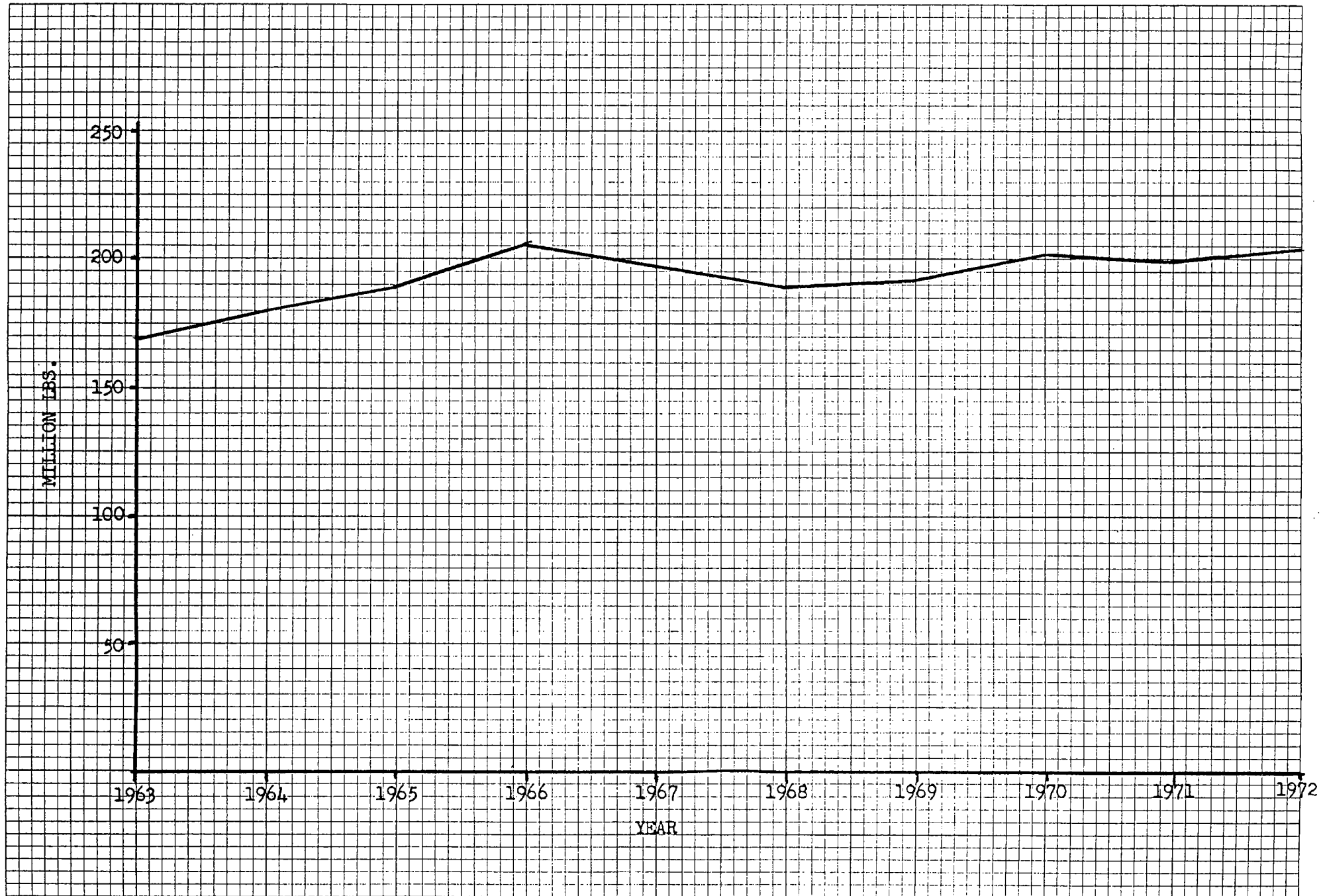


00951

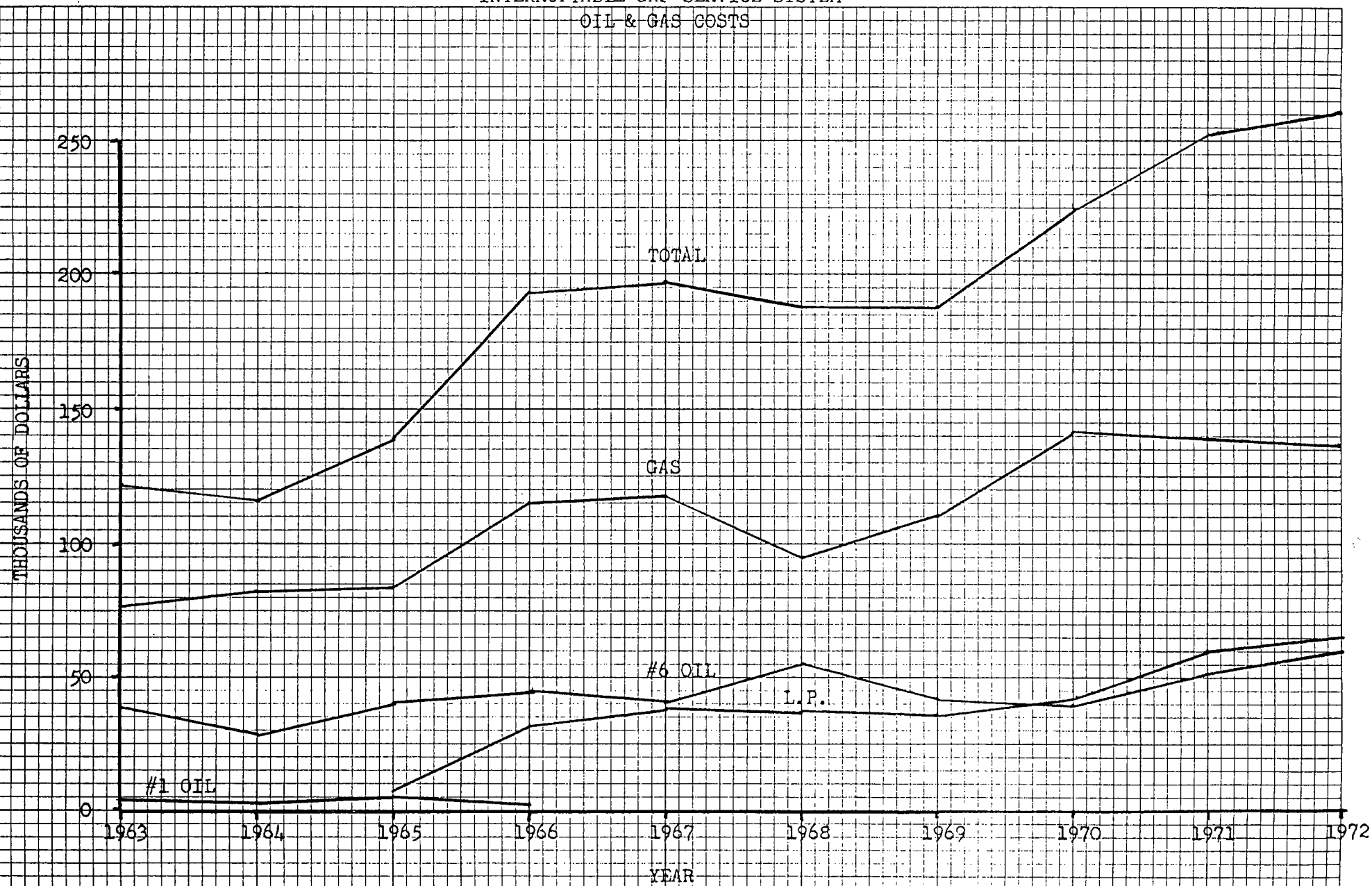


# STEAM USAGE

00952



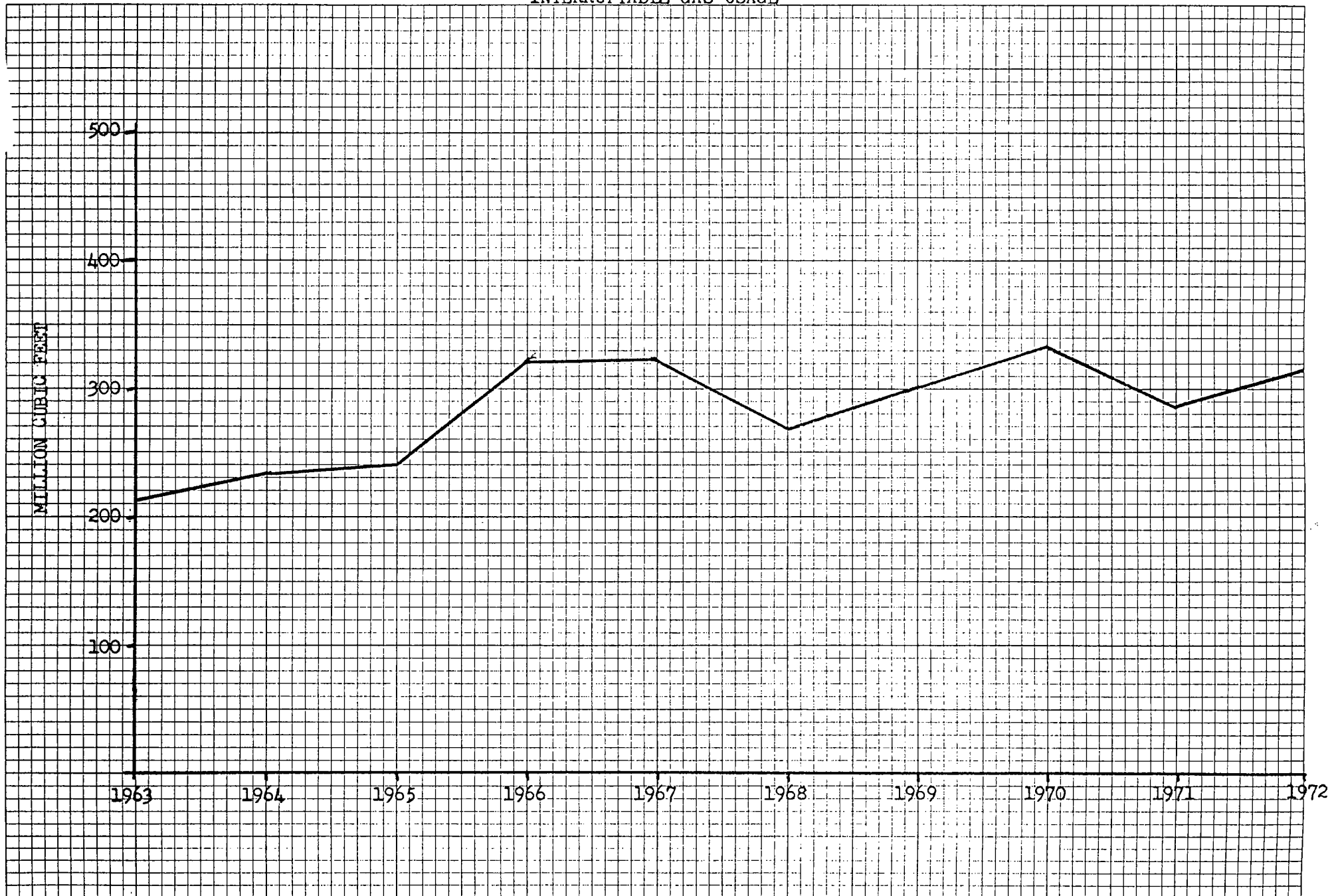
INTERRUPTABLE GAS SERVICE SYSTEM  
OIL & GAS COSTS



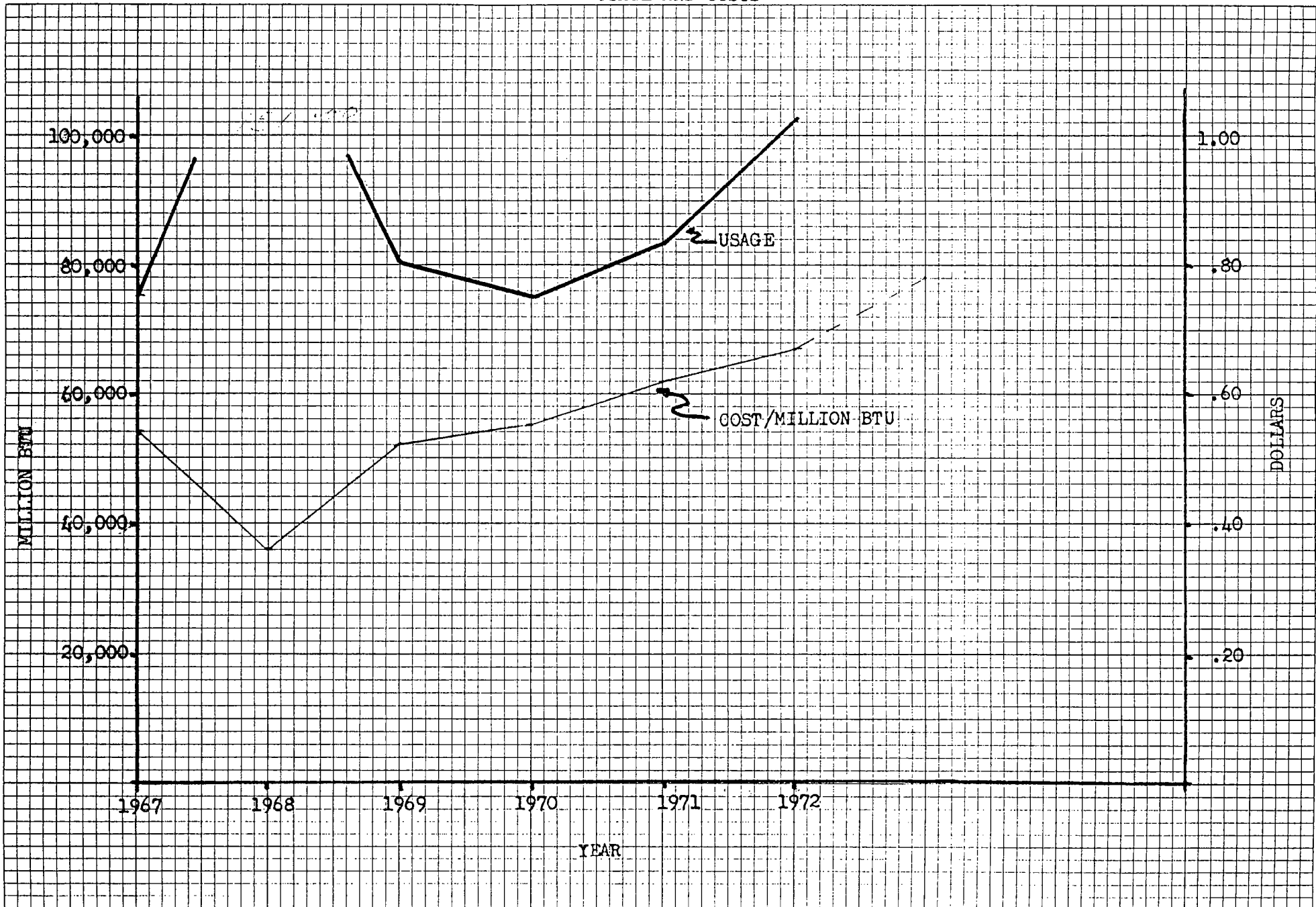
00953

# INTERRUPTABLE GAS USAGE

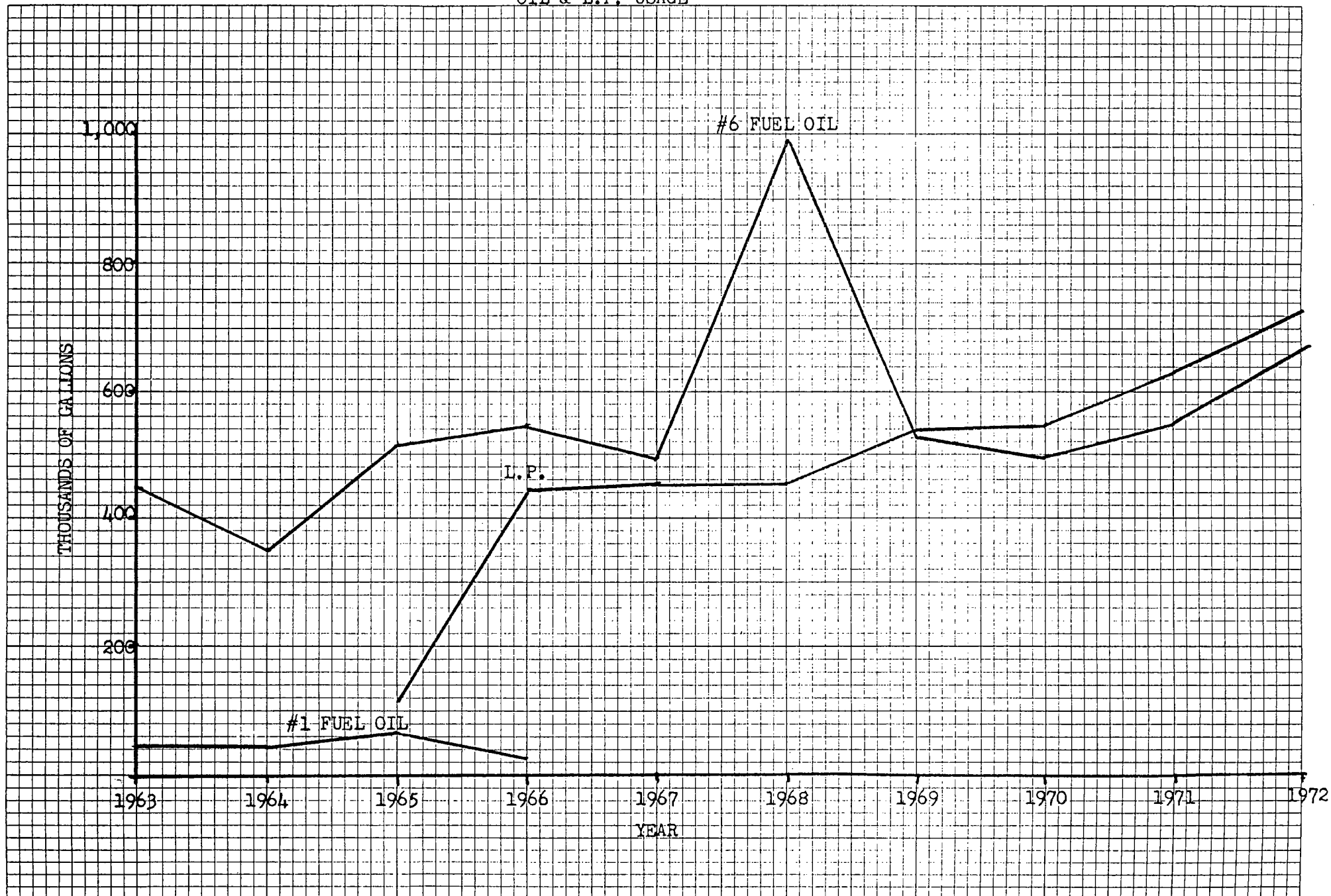
00954



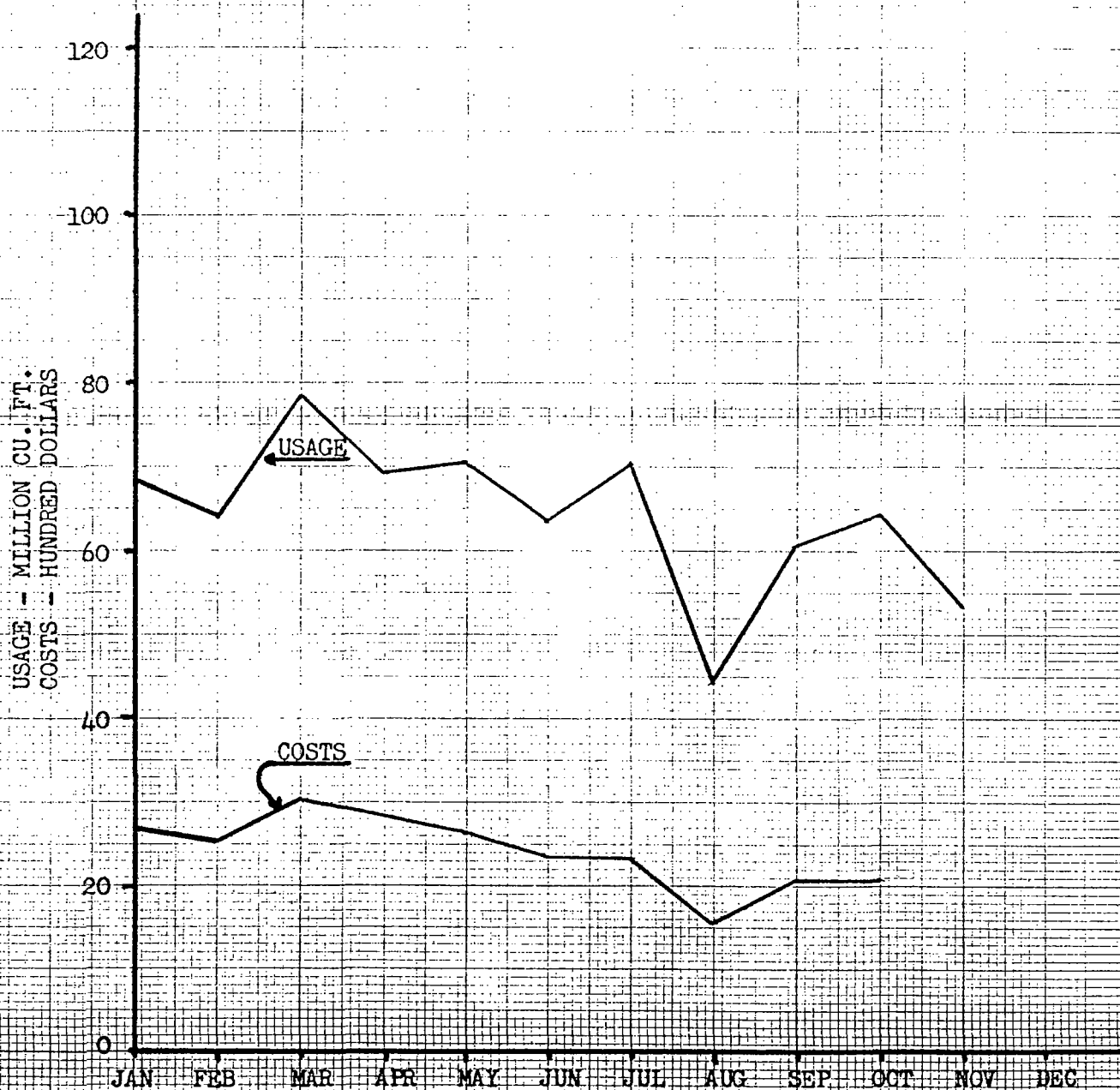
NO. 6 FUEL OIL  
USAGE AND COSTS



OIL & L.P. USAGE

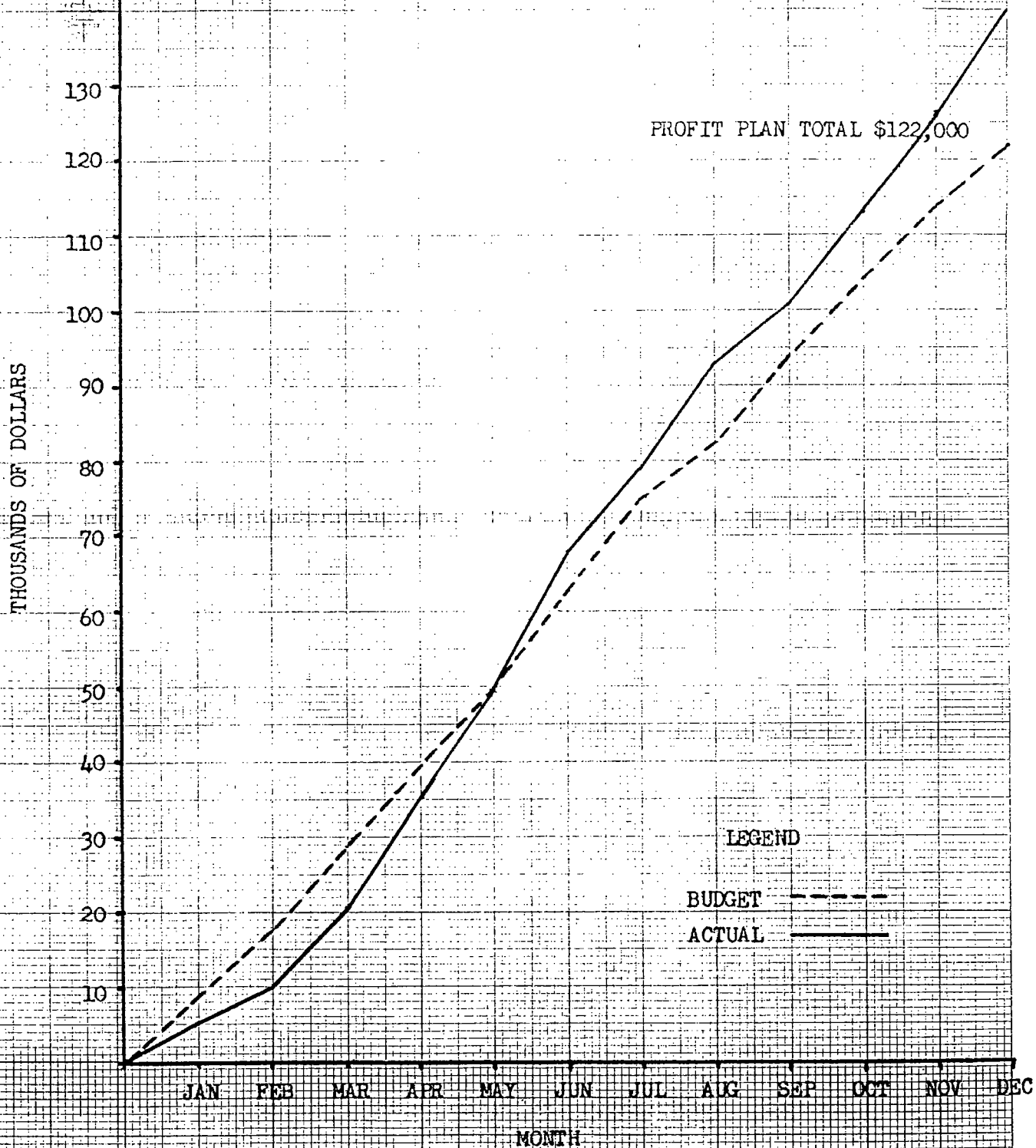


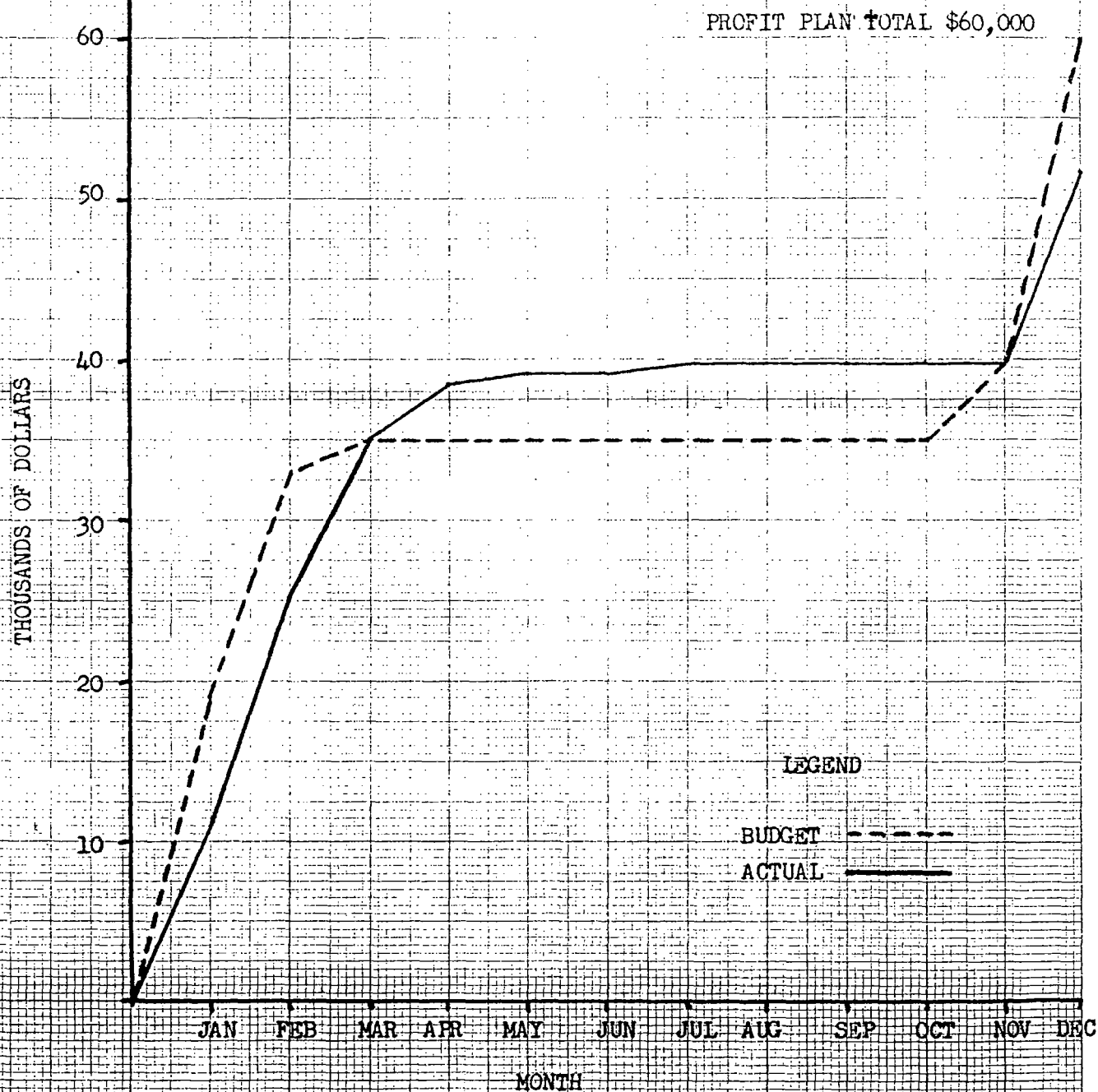
AIR USAGE & COSTS  
1971

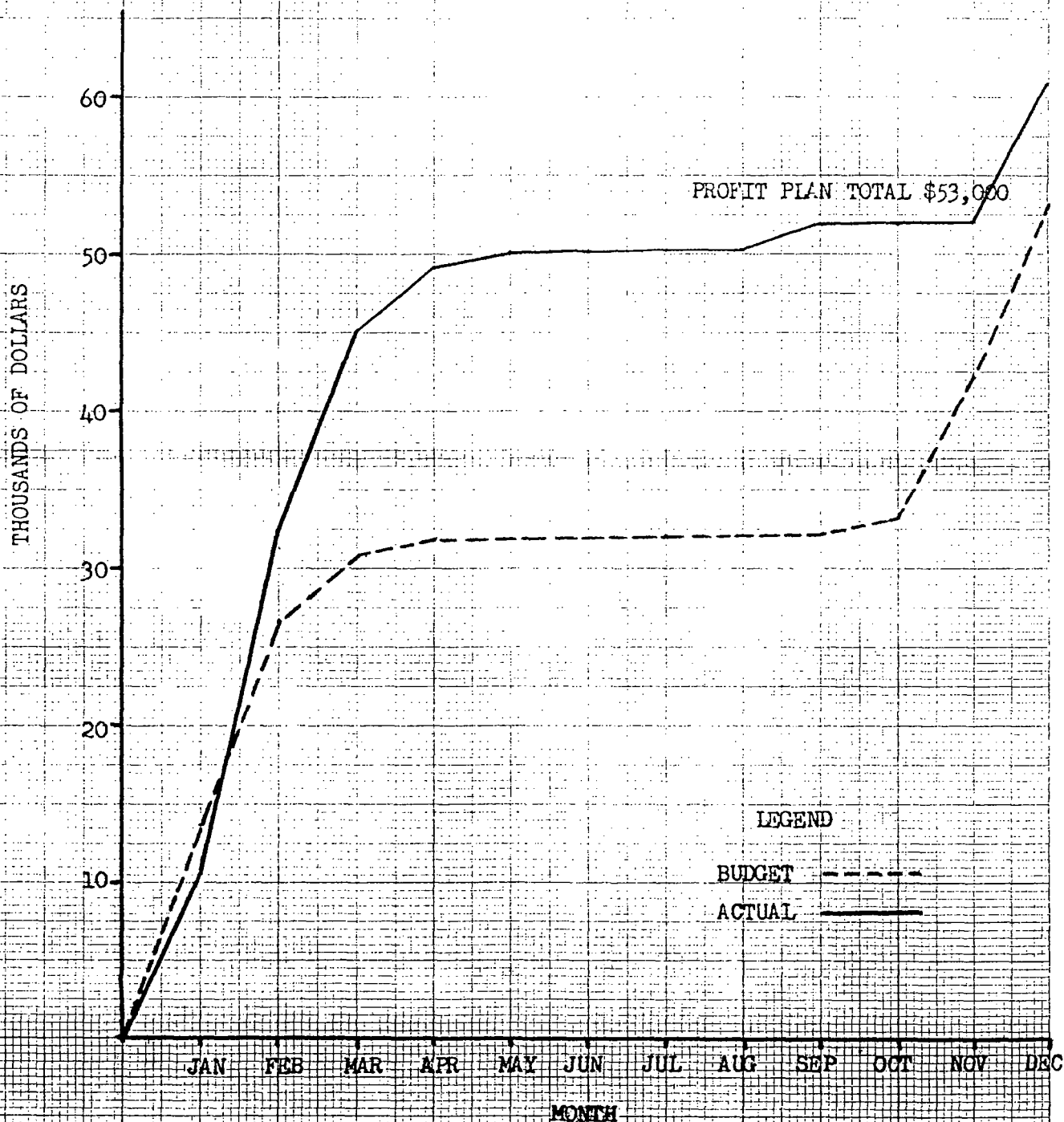




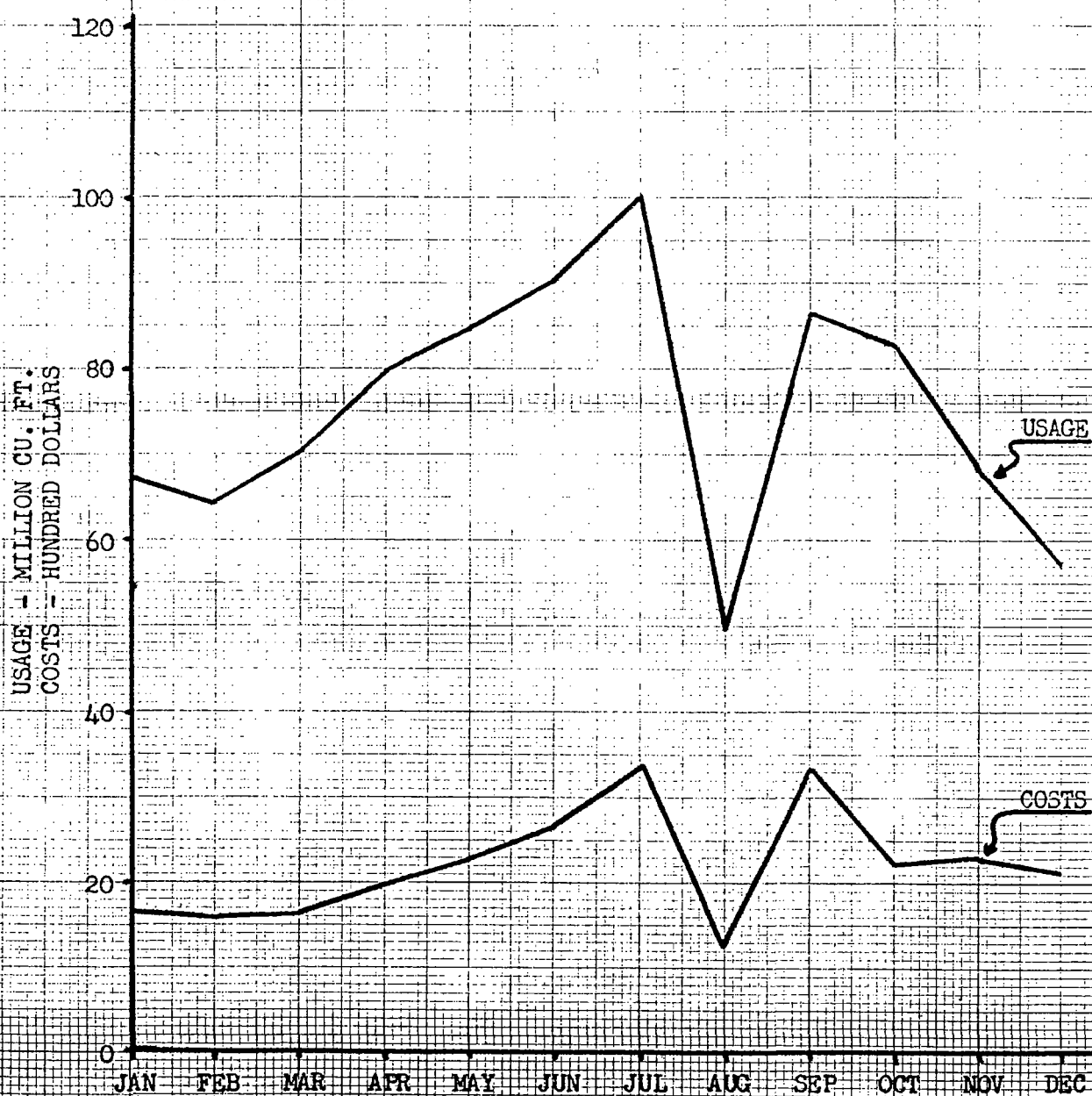
1971



ACCUMULATIVE OIL COSTSACCOUNT 55141971

ACCUMULATIVE L.P. COSTSACCOUNT 55131971

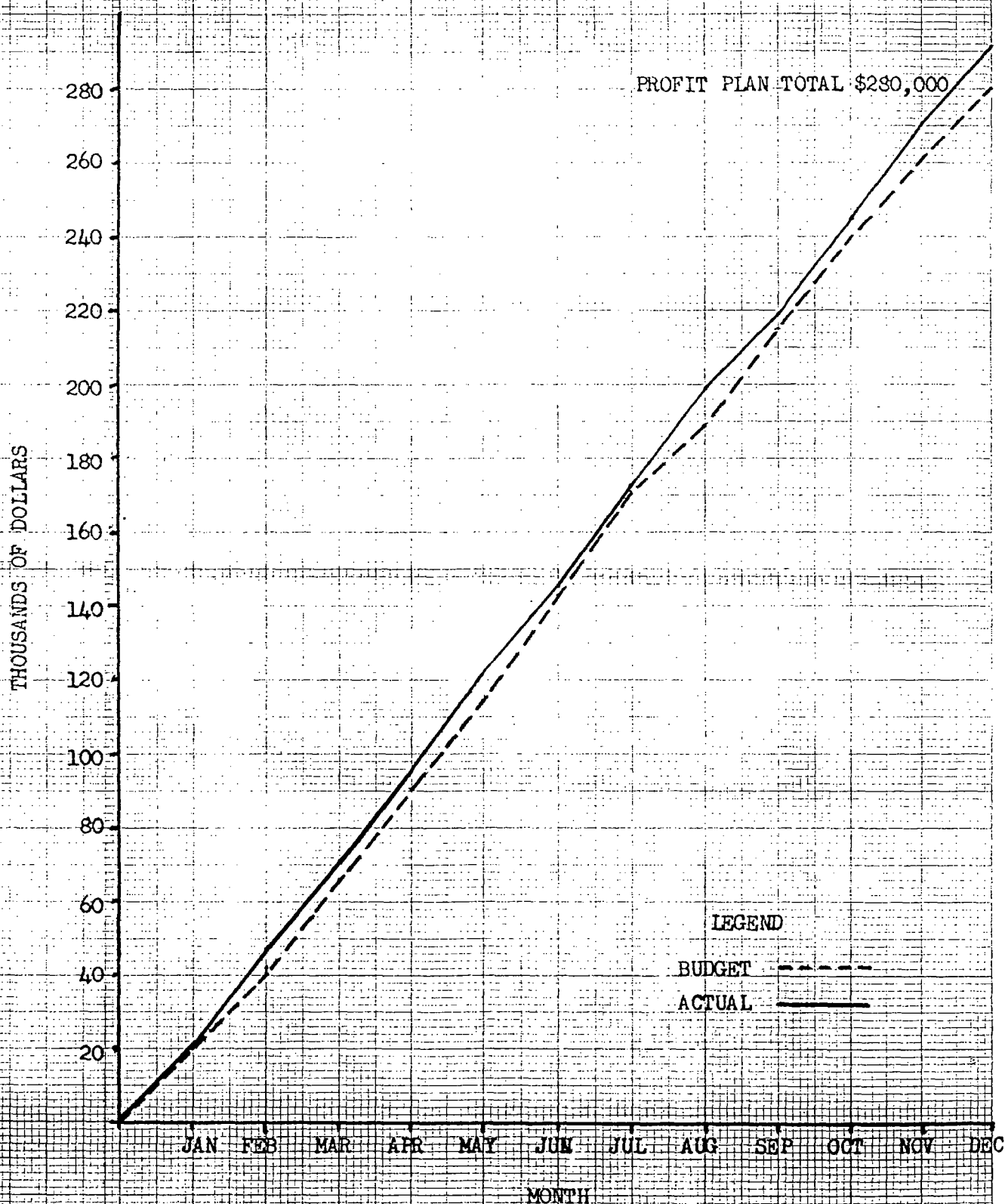
AIR USAGE & COSTS  
1970



## ACCUMULATIVE ELECTRIC COSTS

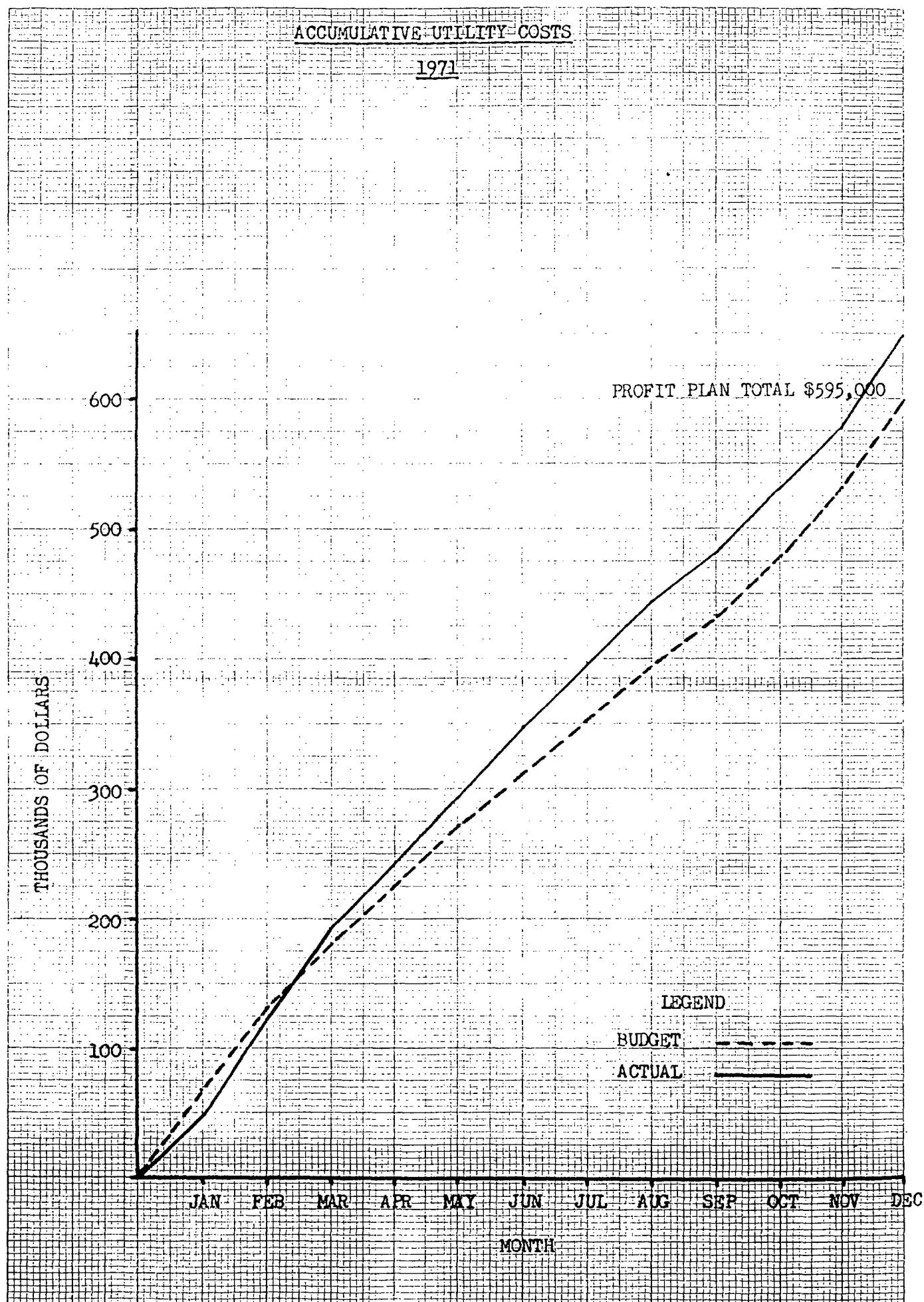
ACCOUNT 5512

1971



## ACCUMULATIVE UTILITY COSTS

1971





WATER USAGE1971

MILLION CUBIC FEET

7.0

6.0

5.0

4.0

3.0

2.0

1.0

JAN

FEB

MAR

APR

MAY

JUN

JUL

AUG

SEP

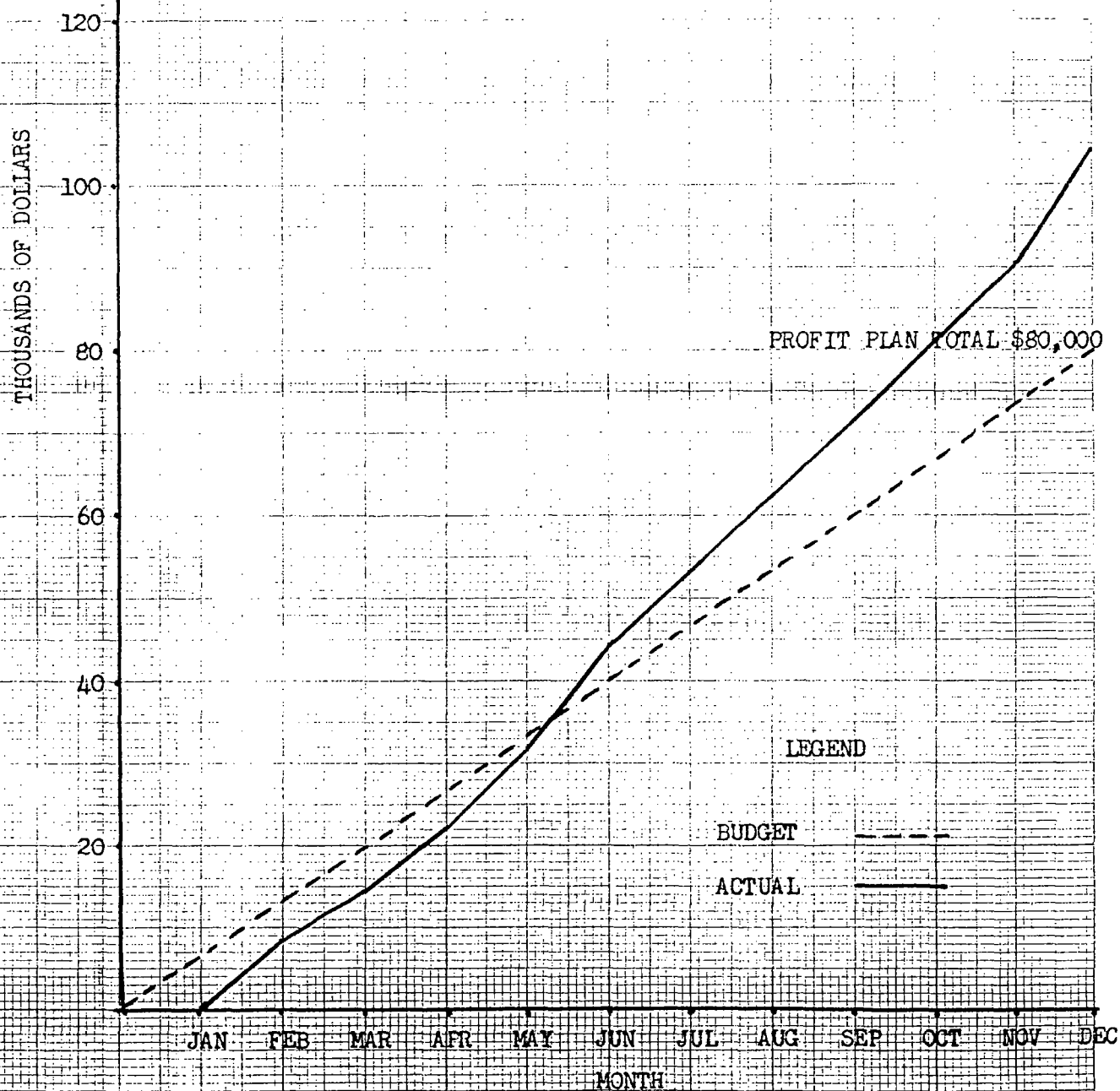
OCT

NOV

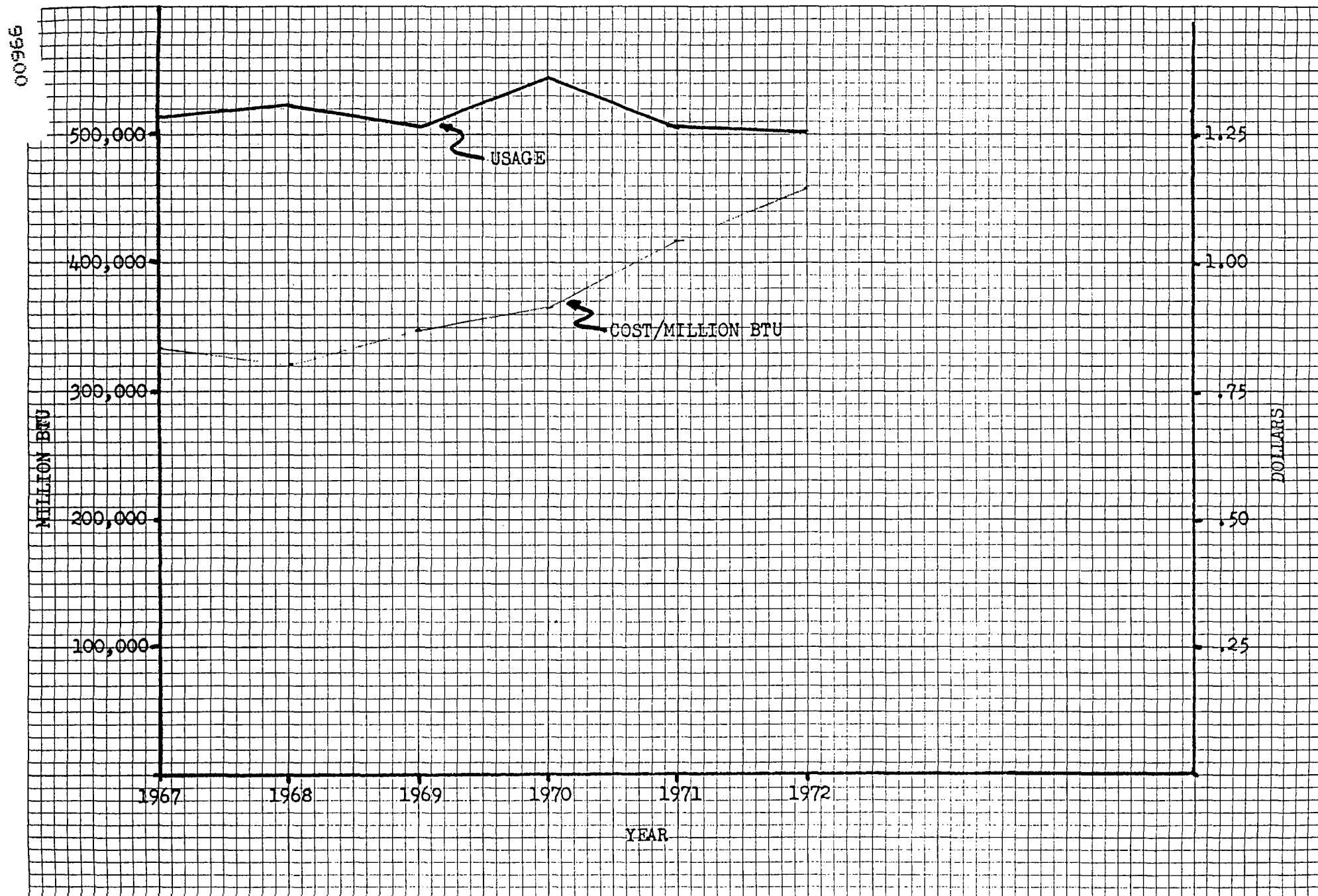
DEC

MONTH

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 10-10-2001 BY 60322 UCBAW/STP/STP

ACCUMULATIVE WATER COSTSACCOUNT 55161971

TOTAL ENERGY USAGE







CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD

00967

REGIONAL DATA OFFICE

201 3RD AVENUE SOUTH

MINNEAPOLIS, MINN. 55402

RENT BILL FOR LEASE AT LOCATION SHOWN

REG.	STATION NUMBER	DATE OF BILL			BILL NUMBER	LEASE NUMBER	RENTAL PERIOD						AMOUNT DUE
		MO.	DAY	YR.			FROM			UP TO			
		MO.	DAY	YR.			MO.	DAY	YR.	MO.	DAY	YR.	
2	5299	7	1	75	85538	69895							1,828.76

FOR RENT OF PROPERTY AT

ST. PAUL, MINNESOTA - PIGS EYE LAKE AREA FOR SANITARY LAND FILL

1974 TAX

CITY OF ST. PAUL

ST. PAUL, MINNESOTA 55102

709 OTR

CASHIER'S MEMO

PAST DUE

Dear Patron:

Our records indicate the above referenced bill is outstanding in our accounts. If you have paid this bill, please advise check number and date paid in order that we may properly credit your account.

If the bill is unpaid, may we have your remittance to cover.

THE MILWAUKEE ROAD

MINNEAPOLIS REGIONAL DATA OFFICE

201 - 3RD AVENUE SOUTH

MINNEAPOLIS, MINNESOTA 55401

AUG 5 1975



The Milwaukee Road  
Regional Data Office - 2  
201 Third Avenue South  
Minneapolis, Minnesota 55401

September 22, 1975

File: 85538 - 7/1/75

## Second Request

OCT 23 1975

City of St. Paul  
St. Paul  
Minnesota 55102

Gentlemen:

We are again tracing you for payment of the attached Tax Bill.  
Three previous tracers have gone unanswered.

The terms of your lease require that the bills be paid upon presentation. This bill is delinquent, and we must ask that you now give it your immediate attention. May we have your check to cover?

# COPY

Regional Data Manager

MCK:mec

Enclosure (1)

STATE OF MINNESOTA  
 POLLUTION CONTROL AGENCY  
 1935 West County Road B2  
 Roseville MN 55113

Robert A. Silvagni  
 Director  
 Division of Solid Waste

## DISPOSAL SITE CLOSURE RECORD

1. State <u>MINN</u>	2. County <u>Ramsey</u>	3. Site Location (Twp, V.C. Sec.)
4. Name of Site <u>Pigs Eye Dump</u>	5. Address of Site	6. Date of Survey <u>10-10-75</u>
7. Person Responsible for Site Closure <u>City of St Paul</u>		8. Organization
9. Name of Person Completing Form <u>GARY PULFORD</u>	10. Title <u>PCS III</u>	11. Organization <u>MPCA</u>

DATE OF CLOSURE \_\_\_\_\_

Requirements:	Yes	No
1. Rat Eradication Program Complete	<input checked="" type="checkbox"/>	—
2. Burning has been stopped	<input checked="" type="checkbox"/>	—
3. Measures have been provided to protect underground and surface water	<input checked="" type="checkbox"/>	—
4. Access closed	<input checked="" type="checkbox"/>	—
5. Site has been compacted and covered with a minimum of 2 feet of earthen fill	<input checked="" type="checkbox"/>	—
6. Final grades and proper surface drainage has been established	<input checked="" type="checkbox"/>	—
7. General Public has been notified	<input checked="" type="checkbox"/>	—
8. Record of Closing has been filed with county Register of Deeds (See SW 12)	<input checked="" type="checkbox"/>	—
9. Photo Enclosed	—	<input checked="" type="checkbox"/>
10. The closed facility has been posted to designate for use the following substitute disposal facility which has been approved by the Agency _____		

metro. area landfills

D.S.W.C. Init. GAP

SIGNATURE

Date

Gary A. Pulford  
10-11-75



October 16, 1975

Mr. Gary A. Pulford, Chief  
Section of Enforcement  
Solid Waste Division  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

RE: City of St. Paul Pig's Eye Landfill Site

Dear Mr. Pulford:

This will confirm the discussions between you and Messrs. Scott Gilbertson and Michael Eggum from this office at the Pig's Eye Landfill site on October 10, 1975. You had made a previous inspection a little over a month ago and submitted a letter to us dated September 5, 1975 wherein you indicated additional work was required before the landfill could be certified as closed. The Department of Public Works has arranged for considerable work on the site over the past several weeks and we believe that all of the points covered in your letter have now been taken care of. Mr. Gilbertson indicated to me that, based on your inspection, you also felt that the site now meets the requirements with the one exception of the seeding.

There will be additional filling done over the next few months and, also, into the spring of 1976. The Department of Public Works will make arrangements to seed the entire site once the filling is completed. We will use a rye seed applied at the rate of 100# per acre as specified in Section 3876 of the Minnesota Highway Department specifications.

The Bolander Construction Company is doing the excavation work at the Metropolitan Waste Water Treatment Plant. It was estimated when they started that approximately 200,000 cubic yards of fill would be disposed of on the landfill site. We understand that Bolander is about half complete with this excavation contract and the balance should be finished up within the next month or two. We have marked the area in red on the attached drawing where Bolander will dispose of additional material this fall.

We believe that there is now adequate fill material over the site to comply with the regulations but we have been advised that there will be another excavation contract at the Metropolitan Waste Water Treatment Plant next spring. We have requested through Mr. Clifford Ramsted, Chief Engineer for the St. Paul Port Authority, that the landfill site be designated as the disposal site in that contract so there will be a considerable quantity of fill added next year.

We are now processing the necessary forms to register the landfill site with Ramsey County as required by the law and we will forward a copy of it to you once it is completed.



Mr. Gary A. Pulford

- 2 -

October 16, 1975

We believe that the Pig's Eye Landfill site is in compliance with the State Solid Waste Regulations for closing of such sites and therefore, we respectfully request that the Minnesota Pollution Control Agency certify it as such.

We appreciate the prompt attention you have given us in agreeing to the last two inspections of the site. If you have any questions or would like to discuss this matter further, please contact me at 298-4321.

Yours very truly,



Donald E. Nygaard  
Maintenance Services Engineer

DEN/em  
Attachment

cc: Clifford Ramsted, Port Authority  
James Schwartz, Public Works Accountant  
Michael Eggum, Office Engineer's Division ✓

APPROVAL:

Daniel J. Dunford, Director of Public Works

P. S. - Cliff Ramsted

I appreciate very much, Cliff, the excellent cooperation that you have given Scott and myself in arranging for additional fill at the landfill site. The PCA has approved the site and will give us a formal letter in this regard. Scott has mentioned to me and you designating the landfill as a disposal site in another excavation contract at the sewage treatment plant. I would appreciate it if you could see that this is formally put into the special provisions in that contract. Thanks very much, Cliff.

DEN



October 16, 1975

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Section of Enforcement  
Solid Waste Division  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

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October 16, 1975

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Section of Enforcement  
Solid Waste Division  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

*Cliff*

PUBLIC AUTHORITY CITY OF ST. PAUL

RFS	_____	FILING INSTRUCTION
EAK	_____	
GGD	_____	OCT 17 1975
FF	_____	
CER	_____	AL' DEPTS.
RAG	_____	
WEM	_____	
RCB	_____	
DATE	_____	

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Attachment

cc: Clifford Ramsted, Port Authority  
James Schwartz, Public Works Accountant  
Michael Eggum, Office Engineer's Division

APPROVAL:

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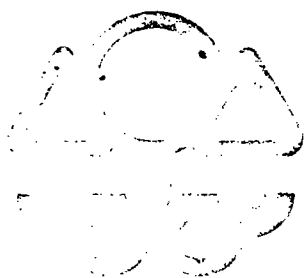
Daniel J. Dunford, Director of Public Works

P. S. - Cliff Ramsted

I appreciate very much, Cliff, the excellent cooperation that you have given Scott and myself in arranging for additional fill at the landfill site. The PCA has approved the site and will give us a formal letter in this regard. Scott has mentioned to me and you designating the landfill as a disposal site in another excavation contract at the sewage treatment plant. I would appreciate it if you could see that this is formally put into the special provisions in that contract. Thanks very much, Cliff.

DEN





## Minnesota Pollution Control Agency

October 30, 1975

(612) 296-7319

Mr. Daniel J. Dunford  
Director of Public Works  
234 City Hall  
St. Paul MN 55102

Dear Mr. Dunford:

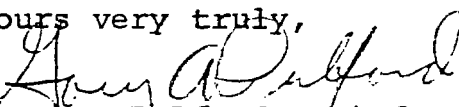
This letter refers to a letter dated October 16, 1975 from Donald E. Nygaard, concerning the closing of the City of St. Paul's Pig's Eye dump.

Based upon observations made at the time of the October 10, 1975 inspection of the site, the Agency now regards the dump, with the exception of proper seeding, to be closed and covered in accordance with Agency Regulation SW 12. It is expected that the seeding project will be completed sometime in the early summer of 1976.

In addition, it should be understood that in accordance with Agency Regulation SW 12(8), it is the City's responsibility to maintain the integrity of the final grade. The City is also responsible for preventing and abating any pollution which may result or which results from the solid wastes disposed of at the site.

If there are any questions concerning this matter, please do not hesitate to contact this office.

Yours very truly,

  
Gary A. Pulford, Chief  
Section of Enforcement  
Solid Waste Division

GAP:sl

Mr. Daniel J. Dunford  
October 30, 1975  
Page 2

CC: Clifford Ramsted, Port Authority  
Dan Schacht, Ramsey County Solid Waste Officer  
Robert Hamilton, Metro Regional Director, MPCA

LANDFILL  
ACCOUNT RECEIVABLE  
As of December 31, 1975

	<u>Billing Invoice</u>	<u>Date</u>	<u>Amount</u>
Ray Anderson	1716	10/1/67	\$ 197.75
	1823	11/1/67	236.25
	1932	12/1/68	34.00
	1340	1/1/70	28.50
D. Noyes Construct. Co.	1529	4/1/70	7.50
	1652	5/1/70	90.00
	1777	6/1/70	46.50
	1897	7/1/70	6.00
Suburban	10227	2/1/68	7.50
	10335	3/1/68	7.00
	10443	4/1/68	8.75
	10559	5/1/68	15.50
Richard Schroeder	4092	12/1/68	13.25
Twin City Rubbish	3963	9/1/71	64.00
	3805	8/1/71	83.20
	3656	7/1/71	57.60
	3515	6/1/71	79.20
Welsh Tire Service	3661	7/1/71	436.00
	3521	6/1/71	210.00
	3370	6/1/71	794.50
Fragrant Trucking	4154	11/1/71	73.40
	4273	12/1/72	74.00
Rueth Contracting	4995	5/1/72	351.60
	5114	6/1/72	174.40
Crosstown	5046	6/1/72	25.60
Addyman	5026		200.00

ACCOUNTS RECEIVABLE December 31, 1974 Balance 3,322.00

FROM THE OFFICE OF  
**CHARLES O. GEORGE COMPANY**  
2215 West County Road B  
Saint Paul, Minnesota 55113  
REGISTERED CIVIL ENGINEER AND LAND SURVEYOR

# Certificate of Survey

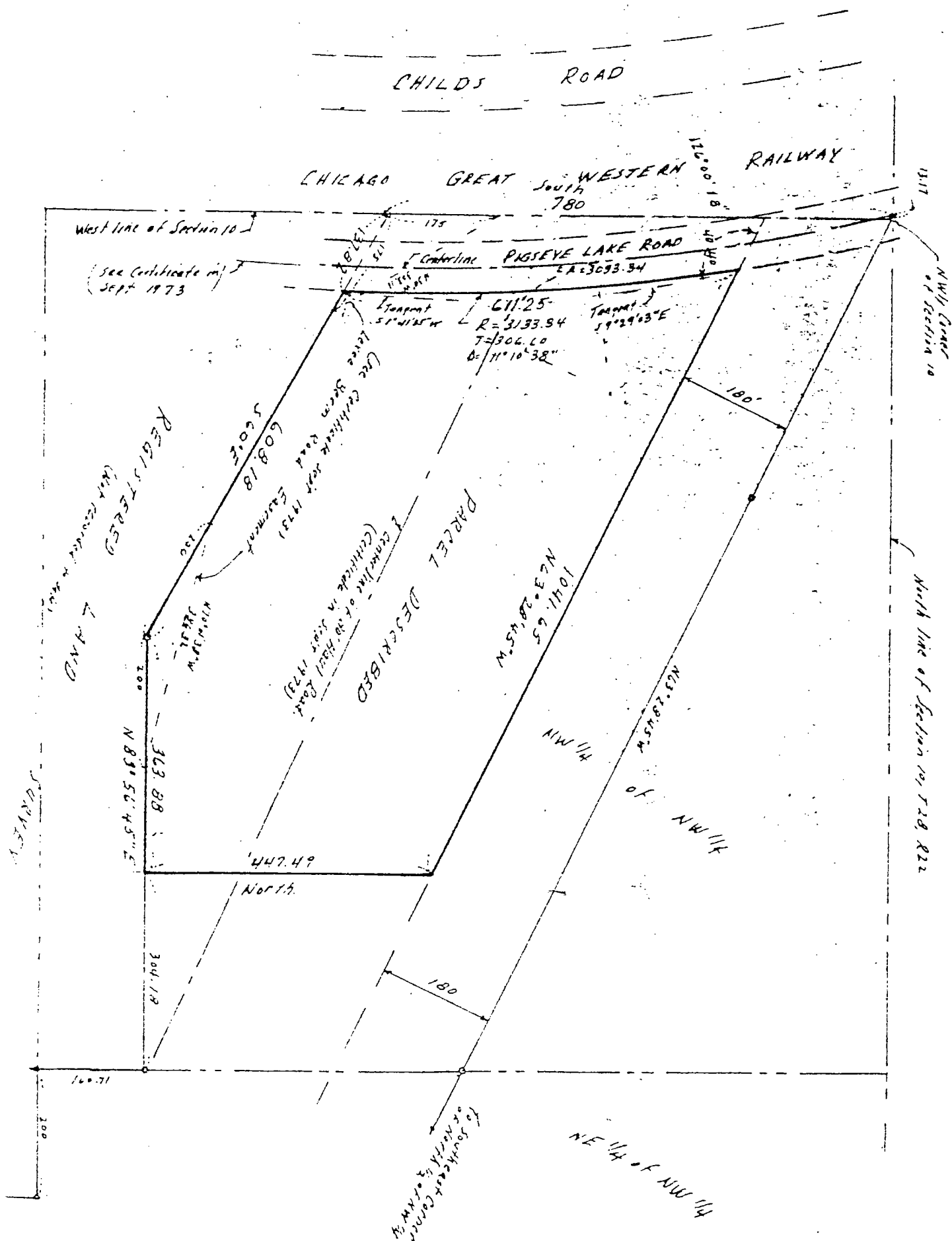
I Hereby Certify that this plat shows a survey made by me of the property described on this plat, and that the corners are correctly placed as shown, and that all locations have been correctly shown.

By Charles O. George  
REGISTERED LAND SURVEYOR

Surveyed For Port Authority  
Date January 1976  
Scale 1"=200'

## Description:

All that part of the NW 1/4 of the NW 1/4 of Section 10, T29, R22 lying within the following described lines:  
Commencing at the Northwest corner of said NW 1/4, thence 560' E 137.82 feet to the point of beginning of the land herein described, and being a point on the Easterly line of Pigeye Lake Road; thence 560' E 137.82 feet to the point of beginning of the land herein described, 363.88 feet, thence North 447.49 feet; thence N 63° 28' 45" W 141.45 feet along a line distant 180 feet Southwesterly from the Northwest corner of the North 1/2 of the NW 1/4 of said Section 10; thence Southerly by a deflection angle of 126° 00' 18" to the left to the tangent of a curve and along a curve with a radius of 3133.34 feet and a delta angle of 11° 10' 38" to the right for an arc distance of 511.25 feet along the Easterly line of Pigeye Lake Road to the point of beginning. Subject to easements of record.  
Contains 12.00 Acres, more or less.



# LEASE - Wood Recycling Facility

00979

- ① 20 year term
- ② \$1,566 payable annually
- ③ Use as wood recycling facility
- ④ Indemnity: if sublease, City shall require Sub to maintain public liability insurance
  - \$500 M
  - \$1 M/yr
  - \$100 M
- ⑤ Destruction: if destruction + lessee doesn't restore, must restore to premises to pre lease condition
- ⑥ Sublease or ass must come before the Bd.
- ⑦ Surrender - lessee has 30<sup>days</sup> to remove bldgs + other property + restore premises
- ⑧ Termination: 6 mos notice if "higher + better use" or mutual agreement by City + Port



# CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Real Estate, Economic and Resource Development Department

516 West Jackson Boulevard • Room 286 • Chicago, Illinois 60606

(312) 236-7600

E. J. STOLL  
Vice President-Real Estate, Economic  
and Resource Development

B. H. BOBBITT  
Assistant Vice President-Real Estate,  
Economic and Resource Development

P. R. SMITHMEYER  
Director-Real Estate

CHICAGO - September 30, 1976

Refer to: 69895

Mr. Daniel J. Dunford  
Director of Public Works  
City of St. Paul  
Department of Public Works  
234 City Hall  
St. Paul, Minnesota 55102

RECEIVED  
ST. PAUL  
DEPT. OF PUBLIC WORKS  
AM 8/18/76  
8/18/9/10/11/12/1/2/3/4/5/6 PM

Dear Mr. Dunford:

Under Lease 69895 the City of St. Paul occupied Milwaukee Road property at St. Paul, Minnesota as a site for an all-purpose dump which lease remains in effect.

Lease 69895 provides for the payment of rental which is to be equal to the real estate taxes assessed against the demised premises on a year-to-year basis. My Accounting Department advises me that Bill #85354 dated August 1, 1976 in the amount of \$1,586.36 covering the 1975 real estate taxes on the leased premises has not yet been paid. Please check your records to determine if a check has been issued to cover this bill advising me of the check number and date. If a check has not yet been issued, please handle for the prompt forwarding of a remittance in the amount of \$1,586.36 direct to our Regional Data Office at Minneapolis, Minnesota or advise your reason for withholding same.

Very truly yours,

E. J. STOLL

BY

*R. R. Bruns*

R. R. BRUNS

Lease Supervisor

RRB:sp

cc: Mr. Michael J. Eggum  
Office Engineering Bureau  
City of St. Paul  
Dept. of Public Works  
234 City Hall & Court House  
St. Paul, Minnesota 55102

SITE NAME: PIG EYE LANDFILL

DCN: 00981

# PAGES: 11

DATE: 10-19-74

SOURCE: \_\_\_\_\_

AUTHOR: PORTAV  
~~COSTPA~~ (LESSOR)

RECIPIENT: COSTPA (LESSEE)

TITLE: Lease Between

SUMMARY: THE This document is a lease between  
PORTAV ~~and~~ COSTPA. PORTAV  
leases land to COSTPA, COSTPA agrees  
to pay yearly rent, ~~for the use~~  
of a wood and use property for  
a wood recycling facility

PRP'S: PORTAV COSTPA \_\_\_\_\_

TRANSPORTERS: \_\_\_\_\_

CODED BY: RP

ENTERED BY: \_\_\_\_\_

Q A BY: \_\_\_\_\_

LEASE

THIS LEASE, Made and executed this 19<sup>th</sup> day of October, 1976, by and between the PORT AUTHORITY OF THE CITY OF SAINT PAUL, a public corporation organized and existing under the provisions of Minnesota Statutes, Chapter 458, hereinafter called "Lessor," and the CITY OF SAINT PAUL, a municipal corporation, hereinafter called "Lessee";

WITNESSETH:

I.

Demised Premises - Term

Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby hire and lease from Lessor that certain tract of land, situated in the County of Ramsey and State of Minnesota, as shown in the survey attached hereto as Exhibit A and made a part hereof, together with easements and appurtenances thereto, subject to existing encumbrances, and together with all buildings, structures, and improvements constructed and to be constructed on said tract of land, which premises are hereinafter called the "Demised Premises."

TO HAVE AND TO HOLD THE SAME for a term, hereinafter called "Original Term," commencing on the 1st day of November, 1976, and ending on the 31st day of October, 1996, unless sooner terminated as hereinafter provided, subject to all of the terms, covenants and conditions set forth herein.

II.

Rentals

Lessee hereby covenants and agrees to pay to Lessor yearly in advance beginning on the commencement date of this Lease, at Lessor's office in the City of Saint Paul, Minnesota, or at such other place as Lessor may from time to time designate in writing, the sum of One Thousand Five Hundred Sixty-six and no/100 Dollars (\$1,566.00) payable for each year during the term of this Lease. Lessor acknowledges receipt of the first yearly payment due under this Lease in the sum of One Thousand Five Hundred Sixty-six and no/100 Dollars (\$1,566.00).

III.

Miscellaneous Representations and Agreements

1. Lessee agrees to construct or have constructed on the Demised Premises during the first year of this Lease improvements

and facilities consisting of a structure for use as a wood recycling facility to be utilized by Lessee as provided for in Article IV herein. This Lease, dated October 19, 1976, shall terminate one year from the date hereof unless otherwise agreed to by the parties or unless Lessee shall have substantially completed construction on the Demised Premises of said improvements.

2. Lessor warrants and represents that in making this Lease and in leasing the Demised Premises, it is acting within the scope of its statutory authority.

3. Lessee warrants and represents that it will submit its site development plans and architectural drawings to Lessor for approval before proceeding with the development, which approval shall not be unreasonably withheld so long as said plans, drawings and specifications conform to the restrictions and covenants set forth in Article IV herein.

4. The demise by Lessor of the premises described in Exhibit A attached hereto is specifically subject to the rights, easements and restrictions of record or otherwise imposed on said premises by any agency or bureau of the United States Government, State of Minnesota, or the City of Saint Paul, and Lessee hereby covenants and agrees to comply with such rights, easements and restrictions and obtain any necessary authorization or permit from such agency or bureau, including the Federal Aviation Administration and the Metropolitan Airports Commission, prior to proceeding with the construction on the premises herein authorized.

#### IV.

##### Use

Lessee shall have the right to use the Demised Premises, and said premises shall be occupied by Lessee or its sublessees exclusively as a location for a wood recycling facility.

It is recognized by the parties that Lessor has been created for the purpose, and its facilities are to be used to promote the general welfare of the Economic District and of the Port as a whole as set out in Minnesota Statutes, Chapter 458.

Lessee agrees not to use, or suffer to permit the Demised Premises or any part thereof to be used, for any purpose or use other than herein provided or in violation of any laws, zoning ordinances or other ordinances, or of the regulation of any governmental authority, or in any manner that will constitute a legal nuisance or in any manner that will violate, suspend, void or make inoperative any policy or policies of insurance of any kind whatsoever at any time carried on the Demised Premises.

## V.

Indemnity

In the event Lessee subleases the operation of the wood recycling facility, it shall require its sublessee to maintain reasonable and adequate general public liability insurance insuring the Lessor, Lessee and sublessee against claims for personal injury, death or property damage occurring in, upon or about the Demised Premises, and on, in or about the streets, parking lots, sidewalks and passageways on and adjoining the Demised Premises. The minimum limits of liability of such insurance shall be Five Hundred Thousand Dollars (\$500,000.00) for injury (or death) to any one person, and One Million Dollars (\$1,000,000.00) for injury (or death) to more than one person, and One Hundred Thousand Dollars (\$100,000.00) with respect to damage to property. Lessee agrees to furnish Lessor with certificates evidencing such insurance written in companies acceptable to Lessor and including Lessor as a named insured on the policy. All such certificates shall provide that the insurance evidenced thereby will not be cancelled by the insurer except on ten (10) days' written notice to Lessor and Lessee.

## VI.

Repairs and Maintenance

Lessee shall at all times and at its own expense (i) keep the Demised Premises and all roadways, yard, sidewalks, railroad tracks, sewer and water lines and other improvements, even though not named herein specifically, in good order, repair and condition, (ii) make all necessary repairs and replacements to the Demised Premises, whether structural or otherwise, and whether ordinary or extraordinary, and (iii) repair all damage done to the Demised Premises from whatever source or cause, so as to keep the Demised Premises in good and tenantable condition.

Lessee shall at its sole cost and expense maintain the improvements on the Demised Premises existing on the commencement date of this Lease and make such additional improvements as may become reasonably necessary to Lessee's use of the Demised Premises as described in Article IV above, including loading, receiving and other facilities for the handling of inbound and outbound shipments. Lessee shall also at its sole cost and expense maintain all walls, fences, and other improvements existing on the Demised Premises on the commencement date and construct such additional ones as may become reasonably necessary to prevent property being stored on the Demised Premises from intruding upon property adjoining the Demised Premises.

Lessee will not at any time permit any security interest or any mechanics', laborers' or materialmen's liens to stand against

the Demised Premises. Deposit with Lessor or with any court of competent jurisdiction of sufficient security to cover such liens shall be deemed compliance with this paragraph.

Lessor shall not be required to make any expenditures whatsoever in connection with this Lease or to make any repairs or to maintain the Demised Premises in any way during the Original Term. It is expressly understood and agreed that, except as provided in this paragraph, this Lease is a "net" Lease, intended to assure Lessor the rent on an absolute net basis.

## VII.

### Destruction

In the event of damage to or destruction of the Demised Premises or any part thereof during the Original Term and Lessee elects not to restore the facility, Lessee shall promptly restore the Demised Premises to substantially the condition existing immediately prior to the commencement of this Lease Agreement. There shall be no abatement of the rents becoming due and payable hereunder during the period of restoration.

## VIII.

### Utilities

Lessor agrees to pay for all utilities and other services used in, on or about the Demised Premises during the Original Term including but not being limited to electricity; water, sewer, gas, telephone, lighting, garbage and rubbish removal.

## IX.

### Remedies

If Lessee should fail to remedy and default in the payment of any sum due under this Lease for ten (10) days after written notice specifying said default, or fails to keep or perform any of the other provisions, covenants or conditions of this Lease to be kept or performed by Lessee within a period of thirty (30) days after written notice to Lessee specifying such default, then and in either event Lessor may at its option and without limiting Lessor in the exercise of any other right or remedy it may have on account of such default, and without any further demand or notice:

- a) Declare this Lease at an end, re-enter the Demised Premises with or without process of law, eject all parties in possession thereof therefrom, and re-possess and enjoy said premises together with all additions, alterations, and improvements thereto.



- b) Cure any such default and charge the cost thereof as additional rent to be paid forthwith by Tenant with interest thereon at the rate of six percent (6%) per annum.
- c) Re-enter the Demised Premises, with or without process of law, eject all parties in possession thereof therefrom, and without terminating this Lease, at any time and from time to time, relet the Demised Premises or any part or parts thereof, for the account of Lessee or otherwise, receive and collect the rents therefor, applying the same first to the payment of such expenses as Lessor may have paid, assumed or incurred in recovering possession of the Demised Premises, including but not limited to attorney's fees and court costs, and for placing the same in good order and condition or preparing or altering the same for reletting, and all other expenses, commissions and charges paid, assumed or incurred by Lessor in or about reletting the Demised Premises, and then to the fulfillment of the covenants of Lessee; but Lessor shall not be obligated to mitigate in this or any other manner damages accruing from any default of Lessee. Any such reletting as provided for herein may be for the remainder of the Original Term or for a longer or shorter period. Lessor may execute any lease made pursuant to the terms hereof either in its own name or in the name of Lessee, as Lessor may see fit, and the sublessee so obtained by Lessor shall be under no obligation whatsoever for the application by Lessor of any rent collected by Lessor from such sublessee to any and all sums due and owing or which may become due and owing under the provisions of this Lease, nor shall Lessee have any right or authority whatever to collect any rent whatever from such sublessee. In any case and whether or not the Demised Premises or any part thereof be relet, Lessee shall pay to Lessor all such sums required to be paid by Lessee up to the time of re-entry by Lessor, and thereafter Lessee shall, if required by Lessor, pay to Lessor until the end of the then current term of this Lease the equivalent of the amount of all rent and other charges required to be paid by Lessee under the terms of this Lease, less the avails of such reletting during the then current term of this Lease, if any, after payment of the expenses of Lessor as aforesaid, and the same shall be due and payable on the several rent days herein specified.

The remedies of Lessor as hereinabove provided are in addition to and not exclusive of any other remedy of Lessor herein given or which may be permitted by law. Any re-entry as provided for herein shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages for any such re-entry or be guilty of trespass.

X.

### Notices

All notices, demands, consents or requests which may be or are required to be given by either party to the other shall be in writing. All notices, demands, consents or requests given by Lessor to Lessee shall be sent by United States registered or certified mail, postage prepaid, addressed to Lessee at the Department of Community Services, City Hall and Court House, Saint Paul, Minnesota 55102, or such other place as Lessee may designate by notice in writing at least ninety (90) days before the effective date of such change of address. All notices, demands, consents or requests by Lessee to Lessor shall be sent by United States registered or certified mail, postage prepaid, addressed to Lessor at 1130 Minnesota Building, Fourth and Cedar, Saint Paul, Minnesota, or at such other place as Lessor may from time to time designate in a written notice to Lessee at least ninety (90) days before the effective date of such change of address. Notices, demands, consents or requests served in the manner hereinabove described shall be deemed sufficiently served or given at the time of the mailings thereof.

XI.

### Assignment and Subletting

This Lease shall not be assigned, nor shall the Demised Premises or any part thereof be sublet, used or occupied by any other person, corporation, partnership, or other organization without Lessee first obtaining the written consent of Lessor thereto, expressed in a resolution adopted by its Commissioners; provided that such consent shall not be unreasonably withheld by Lessor. All of the provisions of this Lease shall be binding upon every assignee, sublessee, user or occupant of said premises or any part thereof, with or without the consent of Lessor, and Lessee hereunder hereby guarantees the performance of all provisions of this Lease by any assignee, sublessee, or occupant; but nothing in this paragraph contained shall be interpreted or construed as a waiver by Lessor of the restrictions set forth in the first sentence of this Article.

Any assignment or subletting by the Lessee of this Lease or of the leasehold interest of Lessee hereunder shall be made subject to all the rights of the Lessor expressed in this Lease and shall be made without prejudice to or impairment of any of Lessor's rights as expressed in this Lease or otherwise.

## XII.

Short Form Lease

The parties agree to execute a short form lease in recordable form embodying the description of the Demised Premises and making reference to this Lease and the term thereof.

## XIII.

Access

The Lessor or its nominee or nominees shall at all times during usual business hours have the right to enter upon said Demised Premises to inspect the same, to make reasonable and necessary repairs thereon for the protection and preservation thereof, to make reasonable and necessary repairs to any improvements in, on or about the Demised Premises, and to cure any defaults of the Lessee hereunder, but nothing herein shall be construed to require the Lessor to make such repairs or to cure such defaults. Lessor or its nominee or nominees shall have the right to enter upon the Demised Premises at any time during the Original Term for the purpose of showing the same to prospective tenants thereof.

## XIV.

Surrender of Premises

Upon termination of this Lease all rights of Lessee hereunder shall absolutely cease, and upon or prior to such termination, Lessee shall surrender said leased premises to the possession of Lessor in the same condition that said premises were in at the beginning of the term thereof, ordinary wear and tear for the purposes herein authorized excepted, provided that Lessee shall have thirty (30) days after such termination in which to remove its buildings and other property. This covenant requires, among other things by and at the expense of the Lessee, the removal from the Demised Premises of all Lessee's buildings, the filling of all pits left thereon by the removal of Lessee's buildings, and/or other structures, and removal of all resultant debris. If Lessee's building, structures and/or other property be not so removed from said Demised Premises within thirty (30) days, after termination of this Lease in any manner, Lessee, at Lessor's option, hereby shall be deemed to have conveyed such then unremoved Lessee's buildings, structures and/or other property absolutely and entirely to Lessor, and all of such then unremoved Lessee's buildings, structures and/or other property located on the Demised Premises shall thereupon become the property of Lessor solely.

In the event that Lessee shall hold the Demised Premises after the expiration or termination of this Lease with the consent of

Lessor, expressed or implied, such holding over shall, in the absence of written agreement on the subject, be deemed to have created a month-to-month tenancy terminable on thirty (30) days' notice by either party to the other, at a monthly rental equal to that herein provided, and otherwise subject to all of the terms and provisions of this Lease.

#### XV.

##### Termination

Lessor may, in addition to other rights contained in this Lease, terminate this Lease after giving Lessee one hundred and eighty (180) days' written notice that the Demised Premises shall be put to a higher and better use.

Lessor and Lessee may mutually agree to terminate this Lease Agreement at any time upon such terms and conditions as may be mutually agreeable between the Lessor and Lessee.

#### XVI.

##### General Provisions

The captions of the paragraphs and articles of this Lease are for convenience only, and shall not be considered or referred to concerning questions of interpretations or construction.

The various rights, options, elections, powers and remedies of the Lessor contained in this Lease shall be construed as cumulative, and no one of them exclusive of any others or of any other legal or equitable remedy which Lessor might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by Lessor shall not in anywise impair its right to any other right or remedy until all obligations imposed upon Lessee have been fully performed.

It is understood and agreed that all of the provisions of this Lease are to be construed as covenants and agreements, as though the words importing such covenants and agreements were used in each separate provision hereof. It is further agreed that all of Lessee's covenants and agreements herein contained are conditions, and that the time of the performance of each is of the essence of this Lease, and that the strict performance of each shall be a condition precedent to the right of Lessee to remain in possession of the premises or to have this Lease continue in effect.

The relationship between the parties hereto shall, at all times, be that of Lessor and Lessee, and Lessee is not to be deemed or considered at any time as agent of Lessor, nor in any sense a joint adventurer with Lessor.

No waiver of any default of Lessee hereunder shall be implied from any omission by Lessor to take action on account of such



default if such default persists or is repeated, and no express waiver shall affect the default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Lease by Lessor shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee.

This Lease shall not be terminable for any reason by Lessee, except as expressly provided for in this instrument. Without limiting the generality of the foregoing, and except as expressly provided for in this instrument, damage to or destruction of any portion or all of the buildings, structures and fixtures upon or which are a part of the Demised Premises by fire, the elements or any other cause whatsoever, whether or not without fault on the part of Lessee, shall not terminate this Lease or entitle Lessee to any abatement of or reduction in rent payable by Lessee hereunder or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding. Furthermore, if, not due to or caused by the willful conduct of Lessor, the use of the Demised Premises for any purpose should at any time during the term of this Lease be prohibited by law or ordinance or other governmental authority, or prevented by injunction or other local interference by any private person, firm or corporation, Lessee shall not be entitled by reason thereof to surrender the Demised Premises, or to any abatement or reduction in rent, or otherwise affect the respective obligations of the parties hereto except as herein specifically provided, but shall be privileged to proceed legally to determine that such constitutes a taking or condemnation.

Lessee hereby agrees to each and all of the terms, covenants and conditions of this Lease and to keep and perform promptly those which are the obligation of the Lessee, it being further agreed that each and all of the covenants and obligations of this Lease shall be binding upon and inure to the benefit of the parties hereto as the case may require and, as well, their respective successors and assigns.

IN WITNESS WHEREOF, The parties hereto have caused these presents to be executed as of the day and year first above written.

In the Presence of:

*James C. Brown*

*Marta K. Schell*

(SEAL)

PORT AUTHORITY OF THE CITY OF  
SAINT PAUL

By:

*John L. Segal*  
President

*James J. Murphy*  
Secretary

In the Presence of:

\_\_\_\_\_  
\_\_\_\_\_

CITY OF SAINT PAUL

By: George Saline  
Mayor

Roger Mattson 11/19/20  
Director, Department of Finance  
and Management Services  
RMA

Approved as to Form:

Paul M. Closhy  
Assistant City Attorney

STATE OF MINNESOTA     }  
COUNTY OF RAMSEY       } ss.

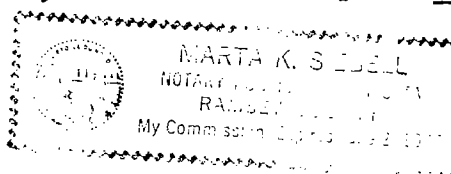
On this 19<sup>th</sup> day of October, 1976, before me a Notary Public within and for said County, personally appeared John L. Segl and Louis H. Meyers, to me personally known, who, being each by me duly sworn, did say that they respectively are the President and the Secretary of the PORT AUTHORITY OF THE CITY OF SAINT PAUL, the public corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Commissioners, and said John L. Segl and Louis H. Meyers acknowledged said instrument to be the free act and deed of said corporation.

Marta K. Seibel

Notary Public, Ramsey County, Minn.

(NOTARIAL SEAL)

My commission expires \_\_\_\_\_



Acquisition From City To  
PA. Warner Road. 00992

CITY OF ST. PAUL  
DEPARTMENT OF FINANCE AND MANAGEMENT SERVICES  
ASSESSMENT DIVISION  
113 CITY HALL ST. PAUL, MINNESOTA 55102  
April 8, 1977

Port Authority  
1130 Minnesota Building  
St. Paul, MN 55101

File 17887, Page 1

Dear Citizen:

As a courtesy to you and as required by law, we want to notify you about a public hearing which may affect you.

The Council of the City of St. Paul will hold a public hearing in the Council Chambers of the City Hall and Court House (third floor) at 10:00 a.m. on April 26, 1977, about the advisability of proceeding with Administrative Order D-3368, approved February 9, 1977 which proposes to:

ACQUIRE LANDS known for Park and Recreation Open Space purposes in the Fish Hatchery Area. The legal description of the property to be acquired and a map indicating the location of the acquisition are attached.

If you wish detailed information regarding this proposed improvement, you are invited to meet with the technical advisors in Room 286 City Hall at 9:30 to 10:00 a.m. the same day as the hearing or you may telephone 298-5317 for acquisition information. (Department of Finance and Management Services).

While the City Charter requires that we notify you of the hearing, we want to help you to learn fully about any improvement you could affect you or your community. Therefore, I sincerely hope you can attend this hearing, so that you can make your views about it known to the City Council, whether for or against.

BERNARD J. CARLSON, DIRECTOR  
DEPARTMENT OF FINANCE AND  
MANAGEMENT SERVICES

PORT AUTHORITY CITY OF ST. PAUL	
RFS _____	FILING
EAK _____	INSTRUCTION
DGD _____	
JFF _____	APR 11 1977
CER _____	ALL DEPTS.
RAG _____	
WEM _____	
RCB _____	
DATE _____	



222-8423  
350 White Square Bldg  
St Paul 55101

METROPOLITAN  
WASTE  
CONTROL  
COMMISSION

00993

June 10, 1977

Mr. Robert Sprafka, Executive Vice President  
St. Paul Port Authority  
330 Minnesota Building  
St. Paul, MN 55101

PORT AUTHORITY CITY OF ST. PAUL	
RES <input checked="" type="checkbox"/>	FILING
EAK <input type="checkbox"/>	INSTRUCTION
DGD <input type="checkbox"/>	
JFF <input type="checkbox"/>	JUN 17 1977
CER <input checked="" type="checkbox"/>	
RAG <input type="checkbox"/>	ALL DEPTS.
WEM <input type="checkbox"/>	
RCB <input type="checkbox"/>	
DATE <input type="text"/>	<input type="text"/>

Subject: Metropolitan Wastewater Treatment Plant Ash Disposal  
Project

Dear Mr. Sprafka:

The Metropolitan Waste Control Commission presently has approximately 150,000 cubic yds. of ash material at the Metropolitan WWTP which must be disposed in the near future. The Commission is requesting permission from the St. Paul Port Authority to utilize the old St. Paul landfill area for this purpose. It is proposed that the ash be spread to a depth of about 2-3 feet on the area depicted in the attached aerial photo. A portion of the area is owned by the Milwaukee Railroad but it is our understanding that the Port Authority has the responsibility for providing cover material on the old landfill area. As part of the project, additional material would be obtained from the construction site at the Metropolitan Wastewater Treatment Plant and would be utilized as cover over the ash. The entire site would then be graded and seeded.

The proposed project would be beneficial to both the Commission and the Port Authority. The landfill area would provide the most economical ash disposal method for the Commission while also providing needed cover material for the site. The possibility of utilizing this area was discussed with the Minnesota Pollution Control Agency and their response was favorable. Formal approval will be required from the Agency before any action can be initiated.

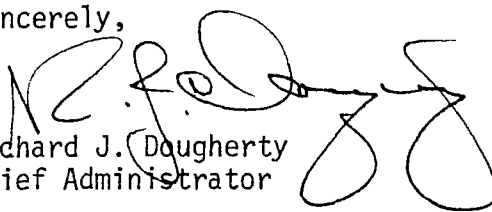
If this proposal is acceptable to the Port Authority, the Commission will initiate preparation of plans and specifications for the project and upon completion will submit them for your review. Our staff will coordinate activities with the Port Authority staff during all stages of the project.



Mr. Robert Sprafka, Exec. Vice Pres.  
St. Paul Port Authority  
June 10, 1977  
Page Two

We look forward to an opportunity to work together with the Port Authority on this project. If additional information is required, please contact us.

Sincerely,



Richard J. Dougherty  
Chief Administrator

RJD:WGM:bdw  
Attachment

cc: B. J. Harrington, Director of Engineering, MWCC  
G. W. Lusher, Director of Operations, MWCC  
W. K. Johnson, Director of Quality Control, MWCC

# PORT AUTHORITY

00995

OF THE CITY OF ST. PAUL

## Memorandum

TO: BOARD OF COMMISSIONERS

DATE: June 21, 1977

FROM: Clifford E. Ramsted *CR*

SUBJECT: ASH DISPOSAL  
METROPOLITAN WASTEWATER TREATMENT PLANT

The Metropolitan Waste Control Commission has formally requested the permission of the Port Authority to dispose of approximately 150,000 cubic yards of fly ash as cover material over approximately 35 acres of the Pig's Eye landfill area. Approximately 10 acres of this area is owned by the Port Authority and the remaining 25 acres are held by the Milwaukee Road.

In 1972, the Port Authority assumed the responsibility to cover the entire landfill area as suitable cover material became available. During the past several years this material has been made available through the expansion projects at the Wastewater Treatment Plant. As a result over 60% of the landfill has been covered to the satisfaction of the Minnesota P.C.A., Public Works Department and the Milwaukee Road at no cost to the Port Authority.

The work under this request will be carried out by the Waste Control Commission under a permit issued by the Minnesota P.C.A. The work involved will include spreading the fly ash, covering with soil from excavations within the plant site, grading and seeding. Permitting the use of the landfill area for this purpose will provide the Commission with the most economical method of ash disposal while providing needed cover material for the site at no cost to the Port Authority.

It is my recommendation that permission be granted to the Metropolitan Waste Control Commission to use the Pig's Eye Landfill for ash disposal as requested.

sjs

# PORT AUTHORITY

OF THE CITY OF ST. PAUL

## Memorandum

TO: BOARD OF COMMISSIONERS

DATE: June 21, 1977

FROM: Clifford E. Ramsted *CR*

SUBJECT: ASH DISPOSAL  
METROPOLITAN WASTEWATER TREATMENT PLANT

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It is my recommendation that permission be granted to the Metropolitan Waste Control Commission to use the Pig's Eye Landfill for ash disposal as requested.

sjs



June 24, 1977

Mr. E. C. Jordan  
Division Engineer  
Milwaukee Road  
221 3rd Ave. S.  
Minneapolis, Minnesota 55401

Re: Ash Disposal  
Pig's Eye Landfill

Dear Mr. Jordan:

Attached to this letter is a request from the Metropolitan Waste Control Commission for permission to dispose of approximately 150,000 cubic yards of ash as cover over the Pig's Eye landfill which is in part owned by the Port Authority and the Milwaukee Road.

At the meeting of the Port Authority Commissioners on Tuesday, June 21, 1977, this request was approved with respect to the Port Authority lands. The request is being forwarded to you for your review and comments.

As you know, the Port Authority assumed the responsibility for covering the Pig's Eye Landfill in 1972 as cover material became available. Consequently, this request is being directed to the Port Authority.

The attached aerial photograph shows the area on which it is proposed to place the fly ash cover.

All work will be done under the supervision of the Waste Control Commission and under a permit granted by the M.P.C.A.

If you have any questions, please contact the writer,

Yours truly,

Clifford E. Ramsted  
Chief Engineer

CER:sjs  
Enclosures

July 11, 1977

Mr. Richard J. Dougherty  
Chief Administrator  
Metropolitan Waste Control Commission  
350 Metro Square Building  
St. Paul, Mn. 55101

RE: Ash Disposal  
Pig's Eye Landfill

Dear Mr. Dougherty:

This letter is in response to your request of June 17, 1977, for permission to dispose of incinerator ash over a portion of the Pig's Eye Landfill easterly of Battle Creek on Milwaukee Road and Port Authority owned lands.

This request was approved by the Port Authority Commissioners at the regular meeting of June 21, 1977. We have contacted the Milwaukee Road and have today received a verbal approval from the office of E. C. Jordan, Division Engineer. When the written approval is received from the Railroad Company, it will be forwarded to you.

Very truly yours,

Robert F. Sprafka  
Executive Vice President

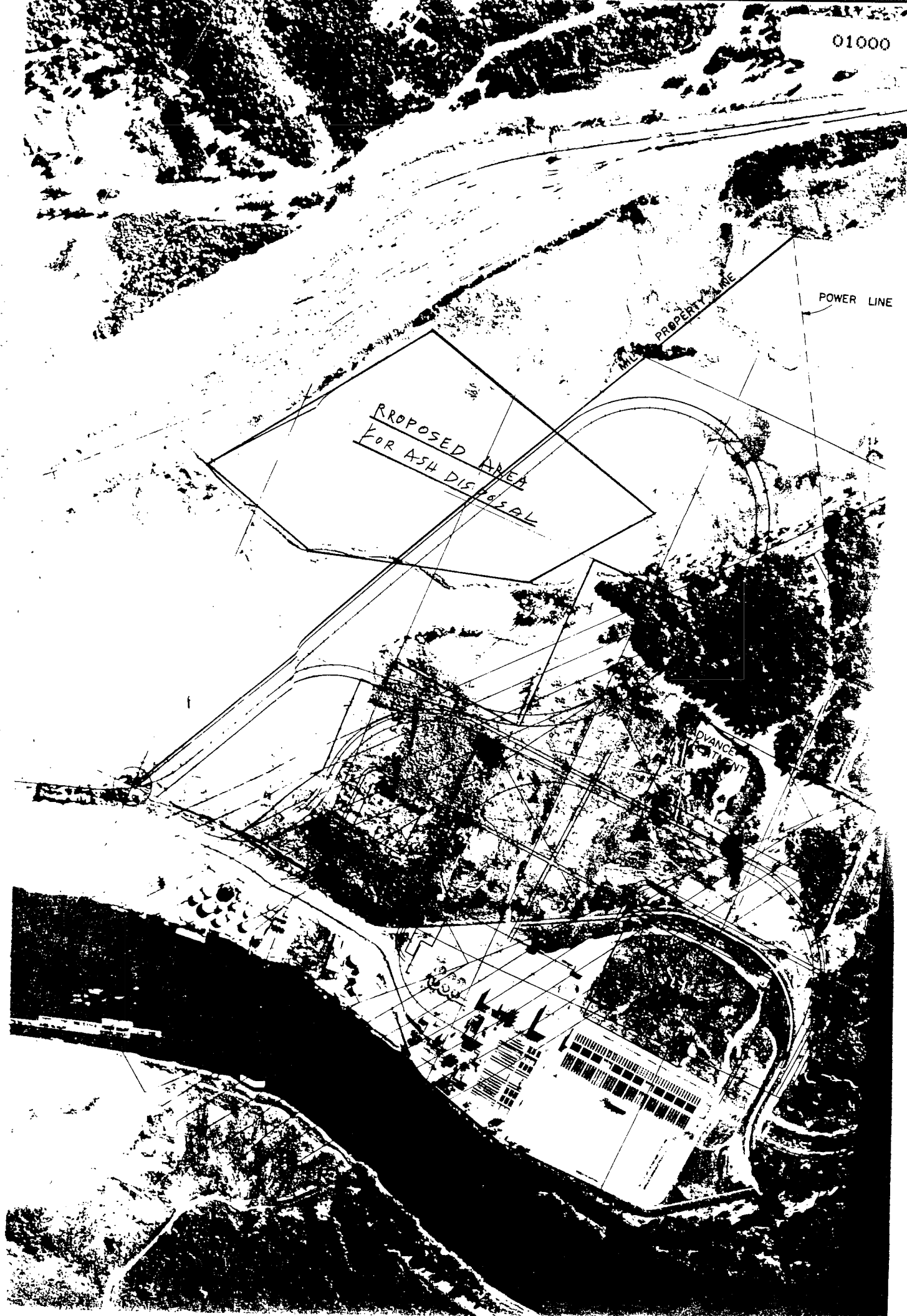
CER:mks

7/11/77

00998

<u>Name</u>	<u>Agency</u>	<u>Phone no.</u>
Michael Comer	MPCA	296-7324
Bruce Croft	MPCA SLOD	296-7317
Wesley Jones	MPCA - Water Quality	296-7234
Ken D. Ryan	St. Paul Planning	298-4510
Steve Prestig	DNR - Metro Region	296-8612
Bob McDerwent	Metro Council	<del>29</del> 291-6403
Mike Folkestad	St. Paul Div of Planning	298-4510
Clifford Hamsted	Port Authority	224-5686
Cliff Aichinger	SPA / EQB	296-2686
Alan Scherdt	Ramsey Co.	484-9104
Ray Payne	MWCC	222-8423
Bill Moore	MWCC	" "
Carl Schenk	Metro Council	" "
Ray Thron	"	291-6409

- c. Providing for the continuation and the development of a variety of urban uses, including industrial and commercial uses, and residential, where appropriate, within the river corridor.
  - d. Utilizing certain reaches of the river as a source of water supply and as a receiving stream for properly treated sewage and industrial waste effluents.
2. In order to manage the river corridor consistent with its natural characteristics and its existing development, the following guidelines are established for each corridor district:
- a. Rural Open Space District. The lands and waters within this district shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions. Presently undeveloped islands shall be maintained in their existing natural state. The transportation function of the river shall be maintained and preserved.
  - b. Urban Diversified District. The lands and waters within this district shall be used and developed to maintain the present diversity of commercial, industrial, residential, and public uses of the lands, including the existing transportation use of the river; to protect historical sites and areas, natural scenic and environmental resources; and to expand public access to and enjoyment of the river. New commercial, industrial, residential, and other uses may be permitted if they are compatible with these goals.
  - c. Urban Developed District. The lands and waters within this district shall be maintained largely as residential areas. The expansion of existing and development of new industrial, commercial, and other non-residential or non-recreational uses shall be limited to preserve and enhance the residential character of this district.
  - d. Urban Open Space District. The lands and waters within this district shall be managed to conserve and protect the existing and potential recreational, scenic, natural, and historic resources and uses within this district for the use and enjoyment of the surrounding region. Open space shall be provided in the open river valley lands for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district shall be protected.
3. The Mississippi River Corridor shall be managed in accordance with the Metropolitan Council's Development Guide Chapter, Critical Areas Act of 1973, and the Minnesota Environmental Policy Act of 1973, and other applicable state laws, and federal laws.







MAKE CHECKS PAYABLE TO

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY**

REGIONAL DATA OFFICE

221 3RD AVENUE SOUTH MINNEAPOLIS, MINN. 55401

23

**RENT BILL FOR LEASE AT LOCATION SHOWN**

REG.	STATION NUMBER	DATE OF BILL			BILL NUMBER	LEASE NUMBER	RENTAL PERIOD						AMOUNT DUE
		MO.	DAY	YR.			FROM			UP TO			
							MO.	DAY	YR.	MO.	DAY	YR.	
2	5299	9	1	77	25098	69895							1,673.68

FOR RENT OF PROPERTY AT

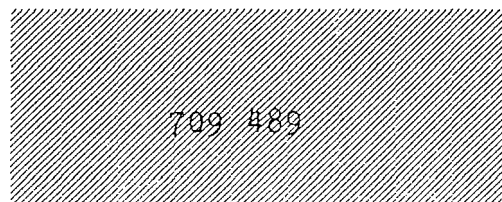
PAID BY DUE

ST. PAUL, MINNESOTA - ALL PURPOSES DUMP - PIGS EYE LAKE AREA FOR  
SANITARY LAND FILL

Make Remittance to C. M. ST. P. & P. RR  
Regional Data Office - 201 Third Ave. So.  
Minneapolis, Minn. 55401  
I. C. C. credit regulations  
require payment of this bill  
by the due date indicated.

CITY OF ST. PAUL

ST. PAUL, MINNESOTA 55102



FOR RAILROAD USE ONLY

ORIGINAL BILL



MAKE CHECKS PAYABLE TO

SEP 27 1977



## CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

REGIONAL DATA OFFICE

01002

221 3RD AVENUE SOUTH MINNEAPOLIS, MINN. 55401

23

## RENT BILL FOR LEASE AT LOCATION SHOWN

REG.	STATION NUMBER	DATE OF BILL			BILL NUMBER	LEASE NUMBER	RENTAL PERIOD						AMOUNT DUE
		MO.	DAY	YR.			FROM			UP TO			
							MO.	DAY	YR.	MO.	DAY	YR.	
2	5299	9	1	77	85096	69895							1,673.68

FOR RENT OF PROPERTY AT

ST. PAUL, MINNESOTA - ALL PURPOSES DUMP- PIGS EYE LAKE AREA FOR  
SANITARY LAND FILL

CITY OF ST. PAUL

ST. PAUL, MINNESOTA 55102

709 489

CASHIER'S MEMO

PAST DUE

Dear Patron:

Our records indicate the above referenced bill is outstanding in our accounts. If you have paid this bill, please advise check number and date paid in order that we may properly credit your account.

If the bill is unpaid, may we have your remittance to cover.

SEP 27 1977

THE MILWAUKEE ROAD

MINNEAPOLIS REGIONAL DATA OFFICE

201 - 3RD AVENUE SOUTH

MINNEAPOLIS, MINNESOTA

55401





George Latimer  
Mayor

## CITY OF SAINT PAUL

UNIT	ACTION	INITIAL	DATE	DEPARTMENT OF PUBLIC WORKS
Bureau		RAH (9)	10/25/77	
Division		TJE (1)		
Asst. Dir.		(7)	10/26	234 City Hall, Saint Paul, Minnesota 55102
Director				
Clerical		bjh	10-25-77	

Daniel J. Dunford, Director

612-298-4241

October 25, 1977

Mr. M. G. Kutz, Regional Data Manager  
The Milwaukee Road  
Regional Acct. Office 2  
221 Third Ave. So.  
Minneapolis, MN 55401

Re: Lease #69895,  
Bill Date 9-1-77,  
Bill #85096,  
Amount \$1,673.68

Dear Mr. Kutz:

The referenced lease #69895 has been terminated. See the enclosed letter dated November 29, 1975.

Yours very truly,

Robert A. Horrisberger, Jr.  
Office Engineering Bureau

TJE/RAH/bjh  
Enclosure

WE SHOULD BILL THEM FOR STATIONARY & TECHNICAL & CLERICAL SERVICES.

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY**

Real Estate, Economic and Resource Development Department

516 West Jackson Boulevard • Room 286 • Chicago, Illinois 60606

(312) 486-4000 648-3013

E. J. STOLL

Vice President-Real Estate, Economic  
and Resource Development

B. H. BOBBITT

Assistant Vice President-Real Estate,  
Economic and Resource Development

P. R. SMITHMEYER

Director-Real Estate

November 17, 1977

Refer to: 69895 - 82316

Mr. J. William Donovan  
Department of Finance & Management Services  
Division of Assessments and Valuations  
City of St. Paul  
286 City Hall  
St. Paul, Minnesota 55102

Dear Mr. Donovan:

In response to our initial telephone conversation and a subsequent meeting held in your office on November 8th, I am attaching hereto proposed Lease 82316 in favor of the City of St. Paul covering approximately 7.43 acres of our Pig's Eye Yard property for use as a site for the storage of shredded elm trees removed from various points in the city account of dutch elm disease. The effective date of this lease is November 1, 1977 as I believe the City is already occupying the property. The rental will be \$900 per annum plus any locally levied taxes.

I find that the City already had a small lease on a portion of this site since 1958 and used the site for purpose of detonating, firing, exploding or otherwise destroying ammunition, fire arms, bombs or other devices containing explosive material. This lease carried no rental charge and was easily overlooked by both of us when it was no longer used for the above stated purposes. Thus, I have proceeded to draft new Lease 82316 to supersede former Lease 66368 and this matter can be quickly resolved as soon as you have executed and returned both copies of the lease agreement to me for similar action on behalf of the Railroad Company.

Regarding Lease 69895 which has also been in effect under a variety of agreements for about 20 years, a very large area of our Pig's Eye Yard property was used by the City of St. Paul as a site for a sanitary land fill operation. There was no rental charge under this lease agreement but the City's use of it resulted in the property being placed upon the local tax rolls and by Supplemental Agreement dated September 25, 1969, the City agreed to pay as annual rental an amount equal to the amount of the annual real estate taxes levied against the property. Such taxes were paid for each year through 1974 but payment has not been rendered for the years of 1975 or 1976 account of the

NOV 21 1977

desire of the City to terminate this lease agreement. However, the entire site was not left by the City in a condition acceptable to the Minnesota Pollution Control Agency and we have not been agreeable to termination of the lease agreement account of our potential liability to restore these lands until the property conforms to all PCA regulations.

Although unknown to the Railroad Company, I have been advised by the St. Paul Port Authority that some agreement now exists wherein the Port Authority has assumed certain obligations to restore the surface condition of this site so that it will be acceptable to the Pollution Control Agency. Further, I was verbally advised that the PCA has inspected and approved the condition of the northwesterly portion of this land fill property situated beyond the extension of the so-called Battle Creek sewer line but some work is periodically carried out on the southerly one-half of this property.

In the meantime, all of this property remains on the tax rolls and tax bills for 1975 amounted to \$1,586.36 and for 1976 were \$1,673.68. Since the City still has an obligation under the lease agreement, it seems to me that a proper solution to this matter would be for the City to execute the attached Second Supplement To Agreement which confirms that the area covered by the original agreement has been reduced to an area as indicated in red on print dated November 1, 1977 attached to and made a part of this Second Supplement. The effective date of this proposed Second Supplement is January 1, 1975 and by execution of this agreement, the City's responsibility would automatically be reduced by one-half and I am attaching hereto bills requesting your payment of one-half of 1975 and 1976 real estate taxes.

I have no objections, of course, to the Port Authority carrying out any site restoration work as may be required on this remaining one-half of the original site and as soon as it has been completed, I would proceed to terminate the agreement in its entirety. Until such time as corrective measures have been taken to satisfy the PCA, your rental will continue to be one-half of the real estate taxes as levied on the entire site.

I trust this arrangement will meet with your approval and I look forward to your execution of the proposed lease, the supplement and delivery of a check payable to the Treasurer - Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering the two tax bills.

Very truly yours,

**(SIGNED) B. H. BOBBITT**

Assistant Vice President

cc: Mr. Daniel J. Dunford  
Director of Public Works  
243 City Hall  
St. Paul, Minnesota 55102



DEPARTMENT OF FINANCE, BUREAU OF VALUATIONS  
City of St. Paul, Minnesota

MEETING NOTICE

Date Dec. 22, , 19 77

TO: Cliff Ramstad ✓

John Martin

Tom Eggum

Robert Piram

J. William Donovan

MEETING DATE: December 28 (Wednesday) , 19 77 TIME: 10:00 A.M.

PLACE: Room 286 City Hall

ROOM RESERVATION CHECKED: \_\_\_\_\_

SUBJECT: Pigs Eye area leases with Chicago-Milwaukee Railroad

1. Old controversial landfill lease

2. Proposed diseased tree storage site lease

REQUESTED BY: Michael Eggum, Civil Engineer III

RSVP TO: Dolores PHONE: 298-5317

PLEASE BRING: \_\_\_\_\_

REMARKS OR AGENDA: The City has taken the position that the landfill lease is terminated.

The railroad has never agreed. Now the area is again needed by the City and a new

lease agreement must be entered into with the railroad.

Unexecuted

01007

Milwaukee  
Road

LEAS

SECOND SUPPLEMENT TO AGREEMENT

THIS AGREEMENT, dated this       day of       , 1977, by and between the CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, A Wisconsin Corporation, hereinafter referred to as "Railroad Company", and the CITY OF ST. PAUL, A Municipal Corporation, under the laws of the State of Minnesota, hereinafter referred to as "City";

W I T N E S S E T H

WHEREAS by agreement dated November 6, 1962 Railroad Company granted to City the right to use that portion of its property in St. Paul, Minnesota as provided in said agreement, for landfill purposes, subject to all of the conditions contained therein and subject to that certain amendment to said agreement dated September 25, 1969 providing for the City to pay an annual rental for the use of said property in an amount equal to the amount of the annual real estate tax levied against the property covered by said agreement.

WHEREAS, the parties hereto mutually desire to reduce the area covered by said agreement from that covered by said agreement to area as indicated in red on the attached plat.

NOW, THEREFORE, the parties hereto agree that that certain agreement referred to above is hereby amended as follows:

The area covered by said agreement is hereby reduced from that area indicated in yellow on the plat attached to said agreement to the area as indicated in red on the plat dated November 1, 1977 attached hereto and made a part hereof.

It is further mutually agreed by the parties hereto that this Second Supplement shall be effective January 1, 1975.

It is further mutually agreed by the parties hereto that all the terms and conditions of that certain agreement dated November 6, 1962 and that certain amendment to agreement dated September 25, 1969 referred to herein shall continue in full force and effect, except as modified by this Supplement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

\_\_\_\_\_  
Witness

By \_\_\_\_\_

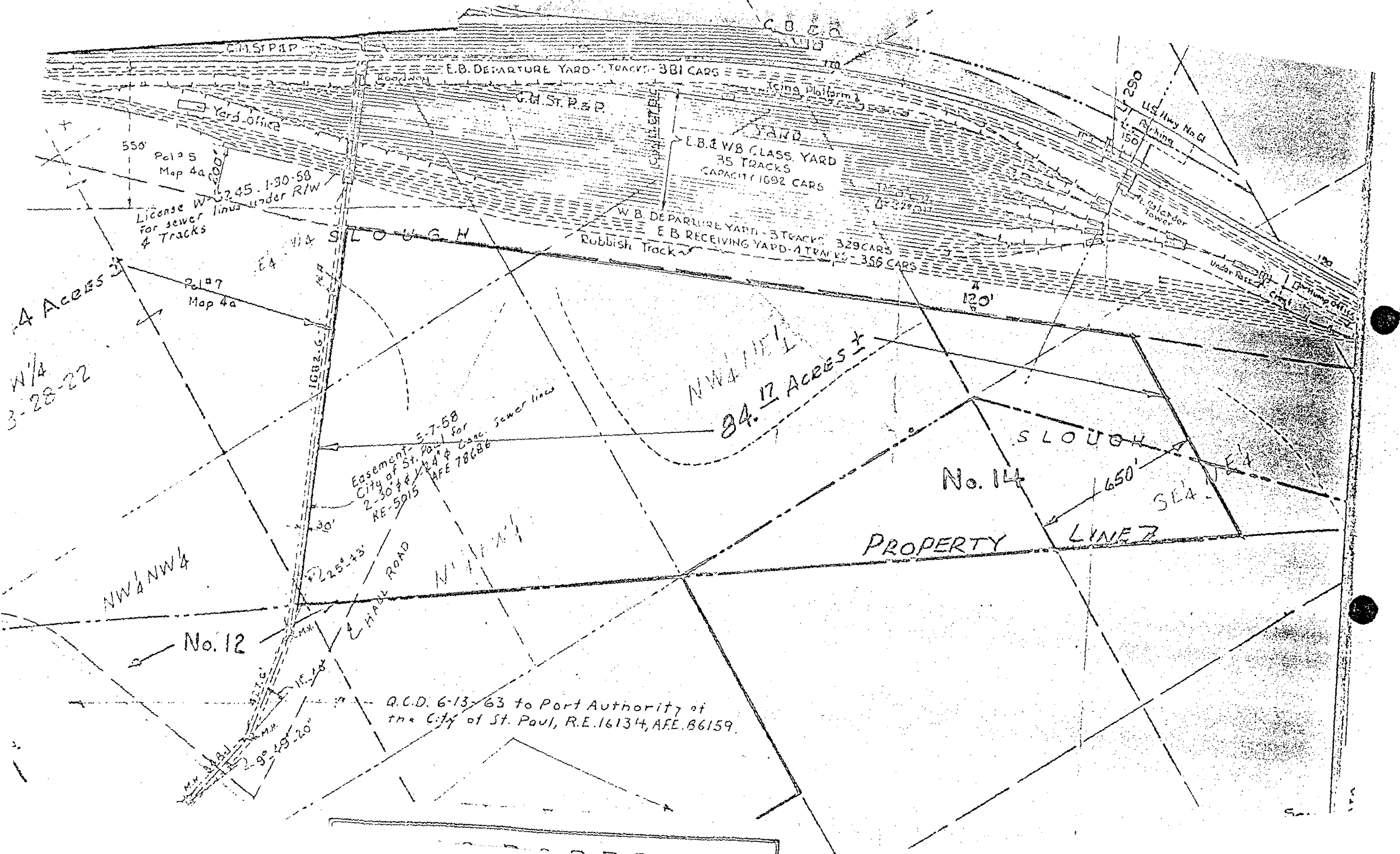
\_\_\_\_\_  
Vice President

CITY OF ST. PAUL

\_\_\_\_\_  
Clerk

By \_\_\_\_\_

\_\_\_\_\_  
Mayor



RAMSEY COUNTY

Fish Hatchery Land Acquisition

Lots 1 and 2, Block 2, Town of Lower St. Paul;

Also, Lots 1 through 10 inclusive, Block 5; Lots 1 through 10 inclusive, Block 6 and Lots 6 through 10 inclusive, Block 7, all in the Town of Lower St. Paul;

Also, a miscellaneous tract described as follows:

Beginning at the Northeast corner of Southeast  $1/4$  of Northeast  $1/4$ , thence West 376 feet, thence South  $38^{\circ} 45'$  West 800 feet, thence Easterly to a point on the East line of Section 4, 650 feet Southerly from the aforesaid  $1/4$   $1/4$  Section corner, thence North to place of beginning; part of Section 4, Township 28 North, Range 22 West;

Also, the area encompassed by the following described line: Commencing at the Northeast corner of Northwest Quarter ( $NW \frac{1}{4}$ ), thence South  $56^{\circ}$  West 8.23 chains, thence North  $69^{\circ} 25'$  West 0.15 chains, thence South  $18 \frac{3}{4}^{\circ}$  West 10.525 chains to point of beginning, thence South  $18 \frac{3}{4}^{\circ}$  West 15.24 chains, thence South  $72 \frac{1}{2}^{\circ}$  East 0.72 chains, thence North  $17 \frac{1}{2}^{\circ}$  East 15.225 chains, thence North  $72 \frac{1}{2}^{\circ}$  West 26 feet, more or less to beginning, except Point Douglas Road, in Section Three (3), Township Twenty-eight (28), Range Twenty-two (22);

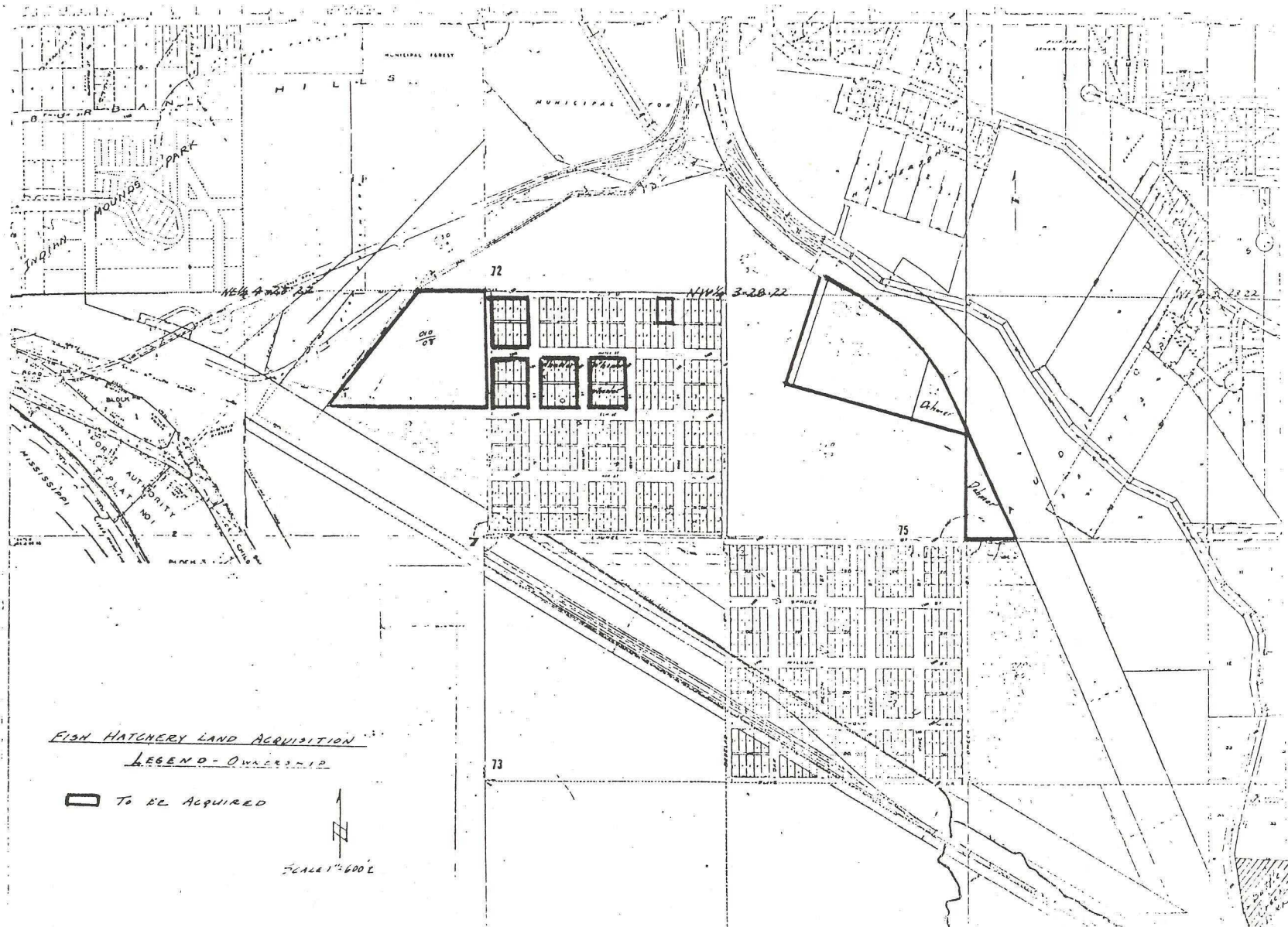
Also, the area encompassed by the following described line: Beginning at a point North  $72 \frac{1}{2}^{\circ}$  West 0.35 chains from a point on Quarter section line located 17.328 chains South from Quarter post on North line of Section Three (3), thence North  $72 \frac{1}{2}^{\circ}$  West 10 chains, thence South  $17 \frac{1}{2}^{\circ}$  West 15.225 chains, thence South  $72^{\circ}$  East 10 chains, thence North  $17 \frac{1}{2}^{\circ}$  East 15.59 chains to point of beginning in Northwest Quarter ( $NW \frac{1}{4}$ ), except Highway No. 61, in Section Three (3), Township Twenty-eight (28), Range Twenty-two (22).

Also, that part of Lot 15 in Auditors Subdivision No. 55 southwesterly of STH 61. Also that part of Section 3, Township 28 North, Range 22 West described as follows:

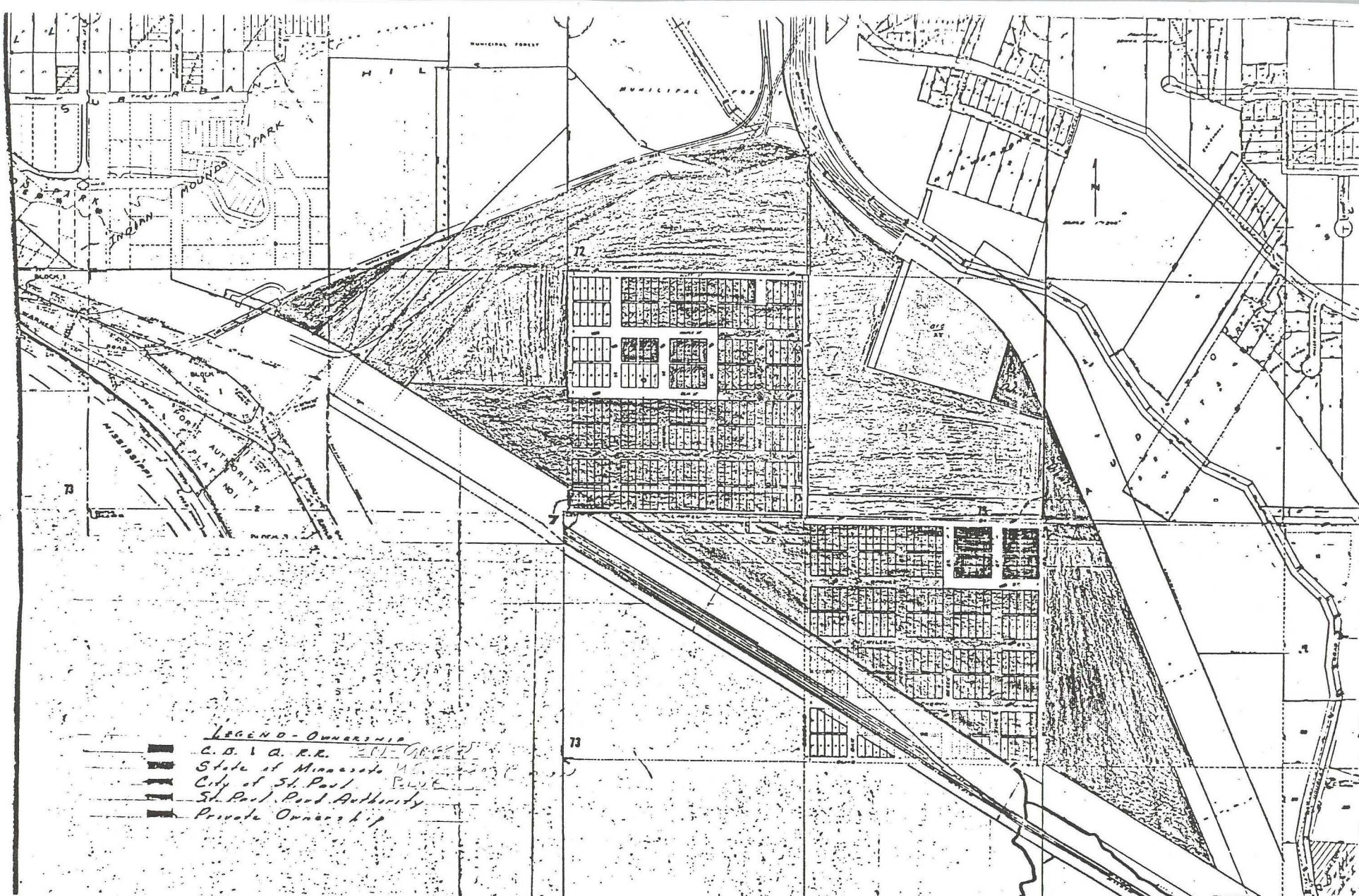
Commencing at a point on the East line of the Northwest  $\frac{1}{4}$ , Section 3, Township 28 North, Range 22 West, said point being  $16 \frac{165}{1000}$  chains South of the Northeast corner of said Northwest  $\frac{1}{4}$ , thence South along said East line of said Northwest  $\frac{1}{4}$ , 17  $\frac{51}{100}$  chains, thence North  $72 \frac{1}{2}$  degrees West  $5 \frac{265}{1000}$  chains, thence North  $17 \frac{1}{2}$  degrees East  $16 \frac{7}{10}$  chains to place of beginning, subject to Point Douglas Road and State Trunk Highway No. 61, except that part described as follows: Commencing at the point of intersection of the center line of Point Douglas Road and the Easterly line of the Northwest  $\frac{1}{4}$  of Sec. 3, Township 28 North, Range 22 West, thence North on said Easterly line of said Northwest  $\frac{1}{4}$  to a point on said Easterly line  $16 \frac{165}{1000}$  chains South of the Northeast corner of said Northwest  $\frac{1}{4}$ , thence South 17 degrees  $30'$  West to the center line of said Point Douglas Road, thence in a general Easterly direction along the center of said Point Douglas Road to the point of beginning, Section 3, Township 28 North, Range 22 West, Ramsey County, Minnesota.

Also, Lots 1 through 5 inclusive, Block 7 and all of Block 8, Town of Lower St. Paul.







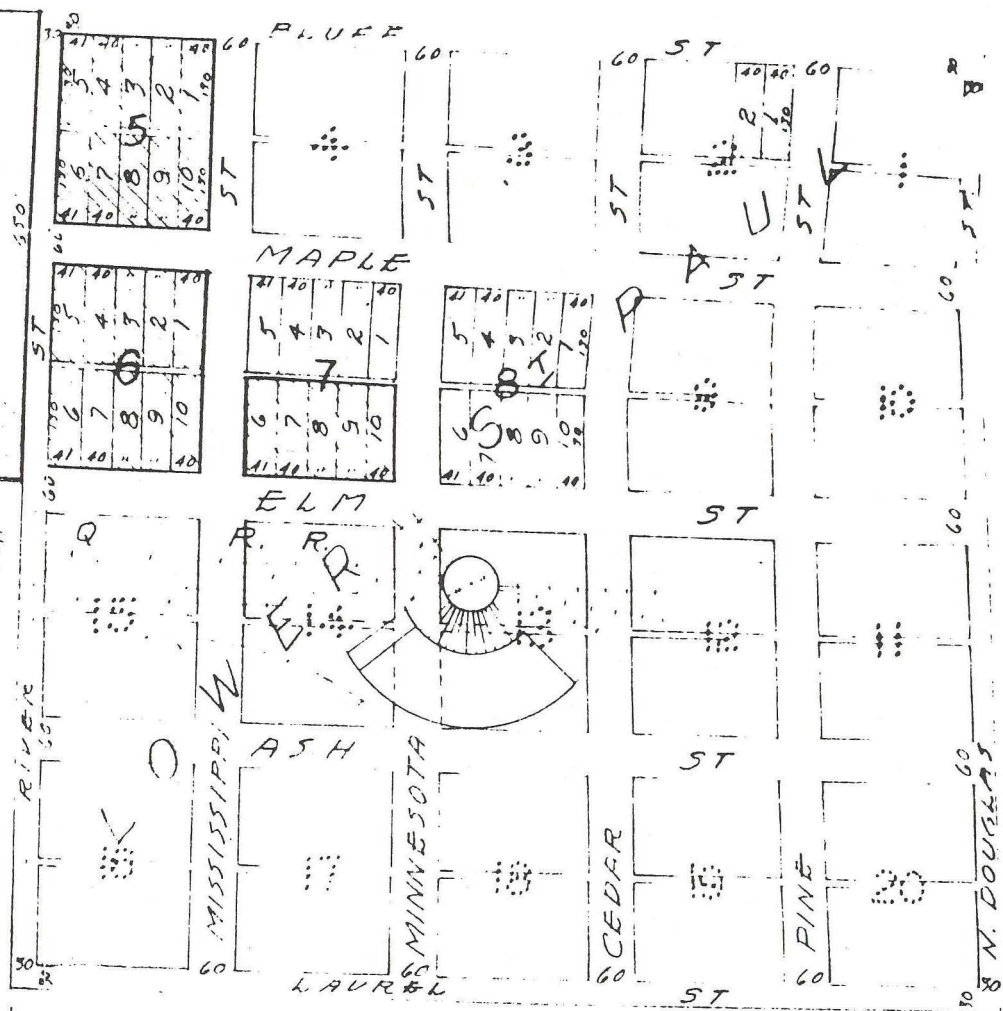
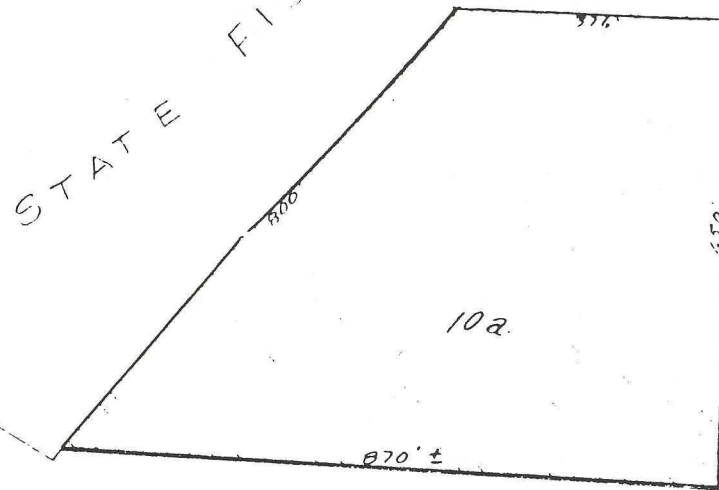




IND. 01010

WARRIERS  
E. 1/4 SEC. 4 T. 28 R. 2E

N.W. 1/4 Sec. 3 T. 28 R. 2E



C. B. &  
C. M. C. B. &  
ST. P. &  
Q. R. R.  
1/4 SECTION LINE

SCALE 1" = 20'

January 18, 1978

Mr. Robert Piram  
Parks Department  
City of St. Paul  
City Hall and Court House  
St. Paul, Minnesota 55102

Dear Bob:

On November 15, 1977, I wrote you regarding the neatness of the wood chipper operation as well as the amount of land area on which trees are being deposited. Our engineer inspected the property today and has determined that the area on which you are dumping trees has exceeded the 15 acres leased from the Port Authority.

I would appreciate it if you would notify the operator of the plant that he should take all of the trees from the property outside the 15 acres and confine them to the leased site. We would also appreciate it if you would again ask him to improve the orderliness of the dumping to avoid any future problems.

Please give me a call as I would like to have an opportunity to meet with you and discuss the operation.

Sincerely,

Donald G. Dunshee  
Director  
Industrial Development

DGD:jmo

cc: E. A. Kraut  
C. E. Ramsted

ROUGH DRAFT

FILE MEMO

RE: Pig's Eye Landfill

On July 20, 1978, myself, Public Works, J. William Donovan, and Peter White of Valuation; Cliff Ramsted, Port Authority; Representative of Metropolitan Waste Control Commission and two Representatives of the State Pollution Control Agency inspected the Pig's Eye Landfill. The MWCC had placed fly ash over the southerly section of the area this past winter, <sup>(7/78)</sup> and the Port Authority ~~had~~ had the area seeded. <sup>in the Spring of '76.</sup> This inspection was <sup>made</sup> to get the PCA's approval of the closure of the Landfill. In particular, we were checking the landfill cover and seeding of the area southerly of Battle Creek within the railroad right-of-way. The PCA's comments ~~of this inspection~~ were (1) They want assurances <sup>as</sup> to who will be liable for any future problems; (2) That the MWCC continues their ground water table analysis, There are several monitoring stations now ~~being~~ being operated by the MWCC, (3) More seeding and ~~cover~~ cover will be needed over part of the area (the area appears to be well covered and seeded to me), (4) Requested that the Port Authority or the ~~MWCC~~ MWCC prepare a map showing the locations of the areas to be released as well as the areas needing more seeding.

COMMENTS: It would appear based on previous correspondence with the PCA as well as the comments made at this inspection, that the PCA might require an indefinite monitoring of the site, ~~and~~ that, because of this and their need for a liability statement ~~that~~ they would be very hesitant to release the Landfill.

RAH/jm

*RAH*  
7/28/78



ROUGH DRAFT

FILE MEMO

RE: Pig's Eye Landfill

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RAH/jm

~~RAH~~  
7/28/78



Chicago, Milwaukee, St. Paul  
and Pacific Railroad Company

Room 286 Union Station  
516 West Jackson Boulevard  
Chicago, Illinois 60606  
Phone 312/648-3000

01016

648-3016

October 27, 1978  
Refer to: 69895

Mr. J. William Donovan  
Dept. of Finance and Management Services  
Division of Assessments and Valuations  
City of St. Paul  
286 City Hall  
St. Paul, Minnesota 55102

RECEIVED

NOV 02 1978

MTCE. SERVICES

Dear Mr. Donovan:

This has reference to my letter of November 17, 1977, a copy of which is attached for your ready reference, concerning the execution of the second Supplement to Agreement on Lease 69895 in favor of the City of St. Paul covering your use of the Railroad Company's property in St. Paul, Minnesota as a site for an all purpose dump and pertaining to payment of one-half of the 1975 and 1976 Real Estate Tax Bills on this Lease site which amounted to \$793.18 and \$836.84 respectively.

Will you please advise when I might receive the executed duplicate copies of the second Supplement to Agreement pertaining to this Lease for execution of same on behalf of the Milwaukee Road and receipt of your remittances in the amounts specified above to cover these past due Real Estate Tax Bills.

As stated in my letter of November 17, 1977, until such time as corrective measures have been taken to satisfy the Pollution Control Agency your rental will continue to be one-half of the Real Estate Taxes as levied on the entire site, therefor I must request that you also forward to me your remittance in the amount of \$879.53 covering one-half of the 1977 Real Estate Taxes on this property which amounted to \$1,759.06. Enclosed is an unaudited bill in the amount of \$879.53 covering one-half of the 1977 Real Estate Taxes and will you please forward your remittance in this amount direct to me at the above address for proper crediting to your Account.

Please promptly forward to me the executed duplicate copies of the second Supplement Agreement as well as your remittances in the amounts stated above to cover the past due Tax Bills so that this matter can be brought to a conclusion. If you should have any further questions please feel free to contact me at Area Code 312-648-3013.

Very truly yours,

*B. H. Bobbitt*

B. H. Bobbitt  
Assistant Vice President

RRB/bp

cc: Mr. Daniel J. Dunford  
Director of Public Works  
243 City Hall  
St. Paul, Minnesota 55102

NOV 2 1978

# PORT AUTHORITY

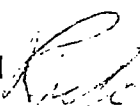
01017

OF THE CITY OF ST. PAUL

## Memorandum

TO: E. A. Kraut

DATE: May 12, 1978

FROM: R. A. Gierdal 

SUBJECT: Dutch Elm Disease Disposal Site.

Yesterday, I visited the Dutch Elm Disposal Site during the fire. The fire apparently started in the pole building which burned to the ground and then spread to the piles of Dutch Elm trees.

Approximately 15 to 20 acres were burning yesterday.

The Fire Department indicated they may be on the site up to a week.

We took pictures yesterday in case this comes before the Board meeting on Tuesday.

RAG:mks

Ramsey City files 13

01018

8  
#1

Mr. Lee Holden  
Ramsey County Division of  
Environmental Health  
934 Woodhill Drive, Room 118  
Roseville, Minnesota 55113

FEB 19 1980

Mr. Lee Holden  
Ramsey County Division of  
Environmental Health  
934 Woodhill Drive, Room 118  
Roseville, Minnesota 55113

Dear Lee:

The attached list of Metro people have indicated that they would like to be on the mailing list for notification of Generator Workshops.

Very truly yours,

*Martin H. Little*

Martin H. Little  
Research Scientist  
Permits Section  
Solid Waste Division

MHL:cd

Attachment

8  
2/1

Mr. Lee Holden  
Ramsey County Division of  
Environmental Health  
934 Woodhill Drive, Room 118  
Roseville, Minnesota 55113

Gene Burau  
American Medical Systems  
3312 Gorham Avenue  
Minneapolis, MN 55426

Hanley Anderson  
Northwest Container  
704 North 5th Street  
Minneapolis, MN 55401

George Mellen  
MS 171510  
Honeywell  
2600 Ridgeway Parkway  
Minneapolis, MN 55413

Vern Brantner  
Champion Packages Inc.  
150 - 26th Ave. S.E.  
Minneapolis, MN 55414

Donald Weber  
Tape Mark Company  
223 E. Marie Avenue  
West St. Paul, MN 55118

Leonard Fueret & Roy Gasser  
Brown & Bigelow  
1286 University Avenue  
St. Paul, MN 55104

Steve Burkhardt  
Ray Glo Inc.  
P.O. Box 1362  
Minneapolis, MN 55440

Dave Carlson  
MGK  
8810 10th Avenue North  
Minneapolis, MN 55427

Bob Ten Eyck  
Economics Lab  
Osborn Building  
St. Paul, MN 55102

Dave Hoffman  
Donaldson Company  
P.O. Box 1299  
Minneapolis, MN 55440

Doug Crofoot  
Donaldson Company  
1400 West 94th Street  
Bloomington, MN 55431

Roger Klinkhammer  
1001 Island Lake Avenue  
St. Paul, MN 55112

Bart Smith  
Concepts Inc.  
2300 Elm Street S.E.  
Minneapolis, MN 55414

Dennis Lindike  
2717 East 22nd Street  
Minneapolis, MN 55406



1-25-80

SITE NAME: PIG EYE LANDFILL

DCN: 01020

= PAGES: 2

DATE: 1-25-80

SOURCE: \_\_\_\_\_

AUTHOR: Jeff Hartman

RECIPIENT: Robert Johnson

TITLE: Letter re: Potential Pollution Problems Near Pig's Eye

SUMMARY: This document is a letter which  
serves to update the committee on the status of issues  
discussed in a recent meeting re: potential sources  
of pollution at Pig's Lake-Red Rock Area. The letter  
states the meeting discussed ~~the~~ potential sources  
of pollution; North Star Steel Company (NSSTEC)  
MWCC; the Pillsbury Company River Terminal  
(PILLSBY). NSSTEC had been depositing ~~a~~ metal slag  
material along Red Rock Road; MWCC operates an ash  
storage basin; and PILLSBY questionable loading & storage of  
fertilizer salts.

PRP'S: NSSTEC MWCC PILLSBY \_\_\_\_\_

TRANSPORTERS: \_\_\_\_\_

CODED BY: AP

ENTERED BY: \_\_\_\_\_

Q A BY: \_\_\_\_\_

*Ramsey City file B*

01020

JAN 25 1980

District 1 Community Council  
Physical Committee  
c/o Robert Johnson, Chairman  
1989 North Park Drive  
St. Paul, Minnesota 55119

RE: Potential Pollution Problems Near Pigs Eye Lake and the Red Rock Area

Dear Mr. Johnson:

This letter shall serve to update your committee on the status of the issues discussed during our recent meeting of January 16, 1980, regarding potential sources of pollution which may exist in the Pigs Eye Lake - Red Rock area.

During our meeting the three (3) potential sources of pollution about which there seemed to be some concern were:

1. North Star Steel Company
2. Metropolitan Waste Control Commission
3. The Pillsbury Company River Terminal

The Minnesota Pollution Control Agency is currently attempting to deal with both existing and potential problems which are resulting or may result from the activities of the above mentioned groups. The following is a brief summary of the current status of each.

The North Star Steel Company has for many years, been depositing metal slag material which is mainly iron, magnesium and calcium oxides into the surface water area along Red Rock Road. While it has been determined that this material is relatively inert, the Minnesota Pollution Control Agency is still requiring that much of this material be pulled back from the surface water area. The specific requirement is that the metal slag material be pulled back from the water such that a distance of 475 feet is maintained between the edge of the stockpile and the centerline of Red Rock Road. This pull-back process is to be accomplished by no later than September 30, 1980. The Minnesota Pollution Control Agency is further requiring that North Star Steel apply for and obtain a permit for future storage of metal slag at this facility. Proper storage controls may then be enforced under various conditions of the permit.

Phone: (612) 297-2726

The Metropolitan Waste Control Commission currently operates an ash storage basin and a grit disposal area on the northern end of Pigs Eye Lake. At this time MWCC is in the process of applying for a permit to excavate the ash from the diked basin as well as the grit from the adjacent area and most likely will propose to spread this material on the surface of the old Pigs Eye dump, a portion of which has not been terminated in accordance with Agency requirements. In the process of excavating these materials, other solid wastes which have been buried with the grit or ash are to be removed to a permitted sanitary landfill. Monitoring wells are already present around the area of the old Pigs Eye dump since this area has been used for ash disposal by MWCC in the past.

It was indicated by individuals at the meeting that the Pillsbury Company's River Terminal operation has in the past conducted some questionable loading and storage practices involving various fertilizers and salts. The Minnesota Pollution Control Agency enforces a general policy which requires that salts be stored on a reasonably impermeable surface and that a berm or dike be present if necessary to minimize runoff to nearby surface water bodies. The asphalt parking lot area at Pillsbury would seem to qualify as a somewhat impermeable surface, however, Pillsbury may have to construct a more effective berm near the lake bank area if future storage of fertilizers and salts is to occur at this location. Regarding the barge loading and unloading practices and subsequent spillage of fertilizers and salts which may be occurring, this Agency will attempt to obtain further information regarding these practices in the hope of correcting existing spillage problems. The matter of coal storage and stockpiling and subsequent runoff problems which may be occurring at Pillsbury has been referred to the Minnesota Pollution Control Agency Division of Water Quality. They will be conducting an inspection of the site for the purpose of determining what runoff problems may exist and what corrective actions may be required.

Any additional information which your organization can provide to this Agency regarding the matters discussed above, will be appreciated. Every attempt will be made to keep you informed of the changing status of these situations.

Thank you for inviting me to your Physical Committee meeting. Please feel free to contact me or anyone else in this Agency with matters which you feel require our attention.

Sincerely,

Jeff Harthun  
Pollution Control Specialist  
Enforcement Section  
Division of Solid Waste

JH:ds

cc: Enrique Gentzsch, Ramsey County  
: Pat Mader, Division of Water Quality, MPCA

*Minneapolis City of...* #149  
JAN 25 1980

District 1 Community Council  
Physical Committee  
c/o Robert Johnson, Chairman  
1989 North Park Drive  
St. Paul, Minnesota 55119

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Sincerely,

Jeff Harthun  
Pollution Control Specialist  
Enforcement Section  
Division of Solid Waste

JH:ds

cc: Enrique Gentzsch, Ramsey County

: Pat Mader, Division of Water Quality, MPCA

2  
1/24



249  
JAN 25 1980

District 1 Community Council  
Physical Committee  
c/o Robert Johnson, Chairman  
1989 North Park Drive  
St. Paul, Minnesota 55119

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Sincerely,

Jeff Harthun  
Pollution Control Specialist  
Enforcement Section  
Division of Solid Waste

JH:ds

cc: Enrique Gentzsch, Ramsey County

: Pat Mader, Division of Water Quality, MPCA

JL  
1/24

July 23, 1981

Mr. Michael B. Ayres  
Regulatory Compliance Section  
Solid & Hazardous Waste Division  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113

RECEIVED  
JUL 29 1981  
MINN. POLLUTION  
CONTROL AGENCY

Dear Mr. Ayres:

As agreed in our meeting of June 18, we have enclosed copies of correspondence concerning our dealings with Red Arrow Waste Disposal Service for the 1972-1973 period, as follows:

1. Request for bids for waste disposal - dated May 23, 1972.
2. Notification to Red Arrow of their successful bid - dated June 29, 1972.
3. Whirlpool's letter of MPCA (G. Pulford) indicating all hazardous waste to Shakopee site - dated January 17, 1973.
4. Letter from MPCA (G. Pulford) to Whirlpool indicating receipt of "3" and thanking us for our cooperation - dated January 22, 1973.
5. Letter from Red Arrow to Whirlpool reporting that all non-hazardous waste always went to American Systems - dated April 12, 1973.
6. Letter from Red Arrow to Whirlpool renewing contract for waste removal, which indicated extra fee for disposal of "Sludge and Hazardous Waste" at Shakopee - dated June 18, 1973.

As the above material indicates, the only period when it was at all possible that any of our wastes would have gone to the Red Arrow Waste Disposal Site referred to in your letter of May 19, 1981, was between June 1, 1972 and January 17, 1973. This is shown by the initial contract award to Red Arrow on June 29, 1972, and our letter to you of January 17, 1973.

Our letter of January 17, 1973 lists estimated quantities of wastes which might have been disposed of by Red Arrow. The hydrocarbon solvents and reducers are volatile hydrocarbons and would have evaporated long ago regardless of where they were located. These materials are also easily degradable by soil bacteria so that none of these materials would remain after this long a period. The paint solids are not considered a hazardous waste under US EPA regulations. Further, these materials are essentially organic and would be expected to degrade biologically when exposed to solid and/or the atmosphere. The oils and greases would also degrade biologically on contact with soil.

We are attempting to determine what synthetic adhesives were being used at St. Paul during this period, but so far, have been unsuccessful. But whatever the case, these materials are also essentially organic in nature

Page Two

and would be expected to degrade naturally with time and biological action. If we can determine exactly what these adhesives are, we will let you know.

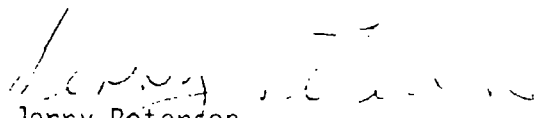
During our meeting, you showed us a picture of a closed drum taken in 1973 which was marked to indicate it was shipped to Whirlpool. We have identified this drum as having contained one of the materials that is used in the phosphating stage of our metal preparation for painting - called "bonderizing" in the trade. This drum would have been emptied of the materials which it contained, and may or may not have been filled with other material before it was disposed of. It is very possible that it contained one of the materials listed in your letter of January 17, 1973 to Mr. Gary Pulford of MPCA.

We also want to assure you that we have never used and consequently had to dispose of chemicals such as cyanides and pesticides at our plant on Arcade Street. We are essentially sheet metal benders and assemblers, and not chemical manufacturers.

The responsibility of handling and disposal of hazardous waste in the division has been turned over to Jerry Peterson, Manager, Material Control.

If I can be of further assistance, please let me know.

Very truly yours,

  
Jerry Peterson  
Manager, Material Control  
WHIRLPOOL CORPORATION  
St. Paul Division

srn/d.43

MINNESOTA POLLUTION CONTROL AGENCY  
COMPLAINT REPORT

County: Ramsey

Date Received: 9-14-82

City: ~~St Paul~~ Newport

Time Received: 10:30 AM

Region: Metro

Received By: Jerry Stahlke

Source of Alleged Pollutant:

N

Name: North Star Steel

Address: 1678 Red Rock Road

City: ~~St Paul~~ ? Newport

Phone: 735-2110

Sec. 23 Twp. \_\_\_\_\_ Range \_\_\_\_\_ W

Location: On their property along  
Red rock Road

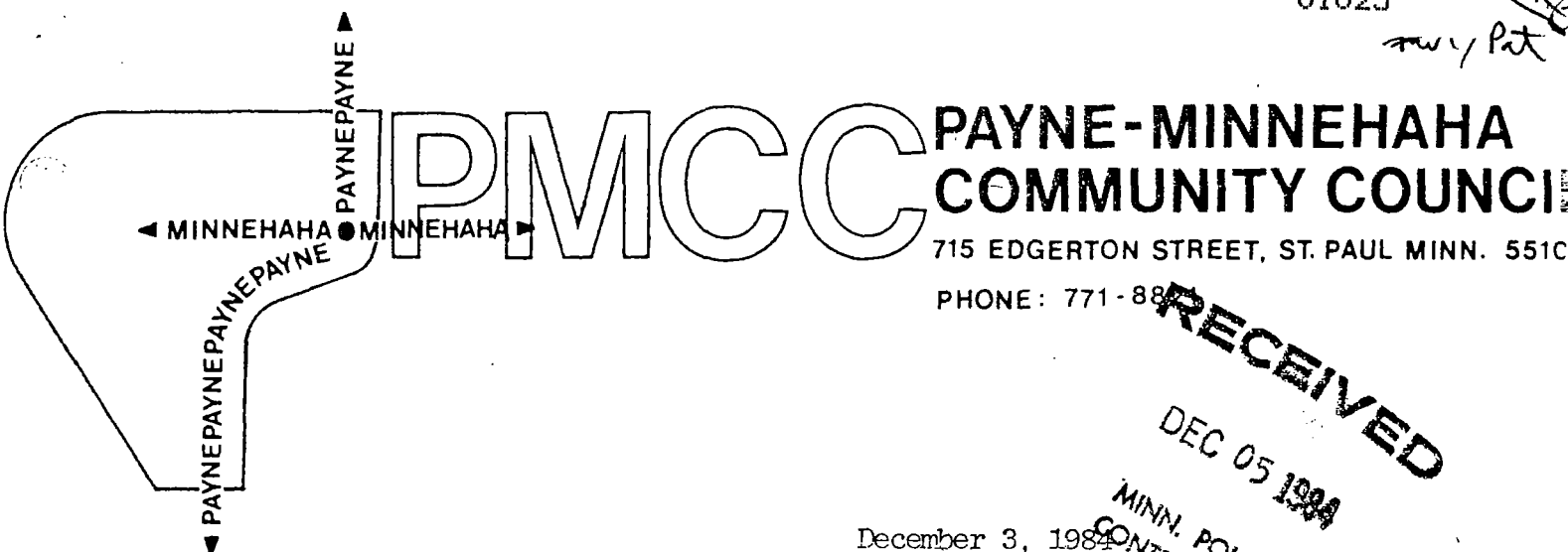
Problem/Situation Description: Complainant alleges<sup>s</sup> that North Star Steel is taking shredded car bodies and disposing of them on their property in the pig's eye lake area. They then cover the waste with slag or gravel...

Inspection Findings: Met with Wayne Brown and Larry Johnson of M.S.S. on 9/28/82. Inspected full site. They are mixing 50/50 clean fill with ground-up car interiors. Informed them of solid waste permit application requirements and gave them Red Star as a contact person. They intend to clean and stockpile waste pending permit approval.

Action Taken/Comments: Note: I still see this stuff at Dakota county landfills on a routine basis, so they can't be disposing of it all in this manner. Jerry 9-15-82 Further note: Al Holm from container Services is the guy who normally hauls this waste, he has a history of using unpermitted sites for disposal although I never caught him with car bodies before...



my Pat



December 3, 1984

Mr. Doug Benson  
 Air Quality Division  
 Minnesota Pollution Control Agency  
 1935 W. County Rd B2  
 St. Paul, Minn. 55113

Dear Mr. Benson,

For the past fifteen years or so, the City of St. Paul has used part of a bluff site in our neighborhood to dispose of street sweepings and occasionally street asphalt. There has also been other persons who have used the site to dispose of various materials and debris.

As a neighborhood council, we have heard complaints over the past several years, and they continue today. The residents are most concerned about potentially harmful residue that could be accumulating in the refuse gathered from the city streets. Because of the lead content in fuel used by cars and trucks, there is some concern that it is carried over in the leaves, sand, and other sweepings picked up and dumped over this bluff.

We are asking your agency to help us in any way you can to establish and monitor the lead level in the soil at this site. We would appreciate very much if you or someone from your department contact us in this matter. If you have any further questions, please feel free to call on myself or our community facilitator at 774-6401.

Sincerely,

*Cathy Armstrong*

Cathy Armstrong  
 Payne Minnehaha Community Council

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN THE MATTER OF:	)	In Proceedings for the
	)	Reorganization of a
CHICAGO, MILWAUKEE, ST. PAUL	)	Railroad
and PACIFIC RAILROAD COMPANY,	)	
	)	No. 77 B 8999
Debtor.	)	Thomas R. McMillen, Judge

ORDER NO. 832

Upon consideration of the Trustee's 1985 Plan of Reorganization (the "Plan"), due notice having been given to creditors, stockholders and other parties in interest in accordance with this Court's Order No. 811, the Court, acting as Court of Reorganization for the Debtor pursuant to Section 77 of the Bankruptcy Act of 1898, as amended ("Section 77"), finds and concludes as follows:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Debtor in this proceeding, a Wisconsin corporation, filed on December 19, 1977 its petition to this Court to effect a plan of reorganization under Section 77. A copy of that petition was filed at the same time with the Interstate Commerce Commission (the "Commission"). This Court has jurisdiction over the proceedings pursuant to Section 77.

2. The Court approved the petition as properly filed on December 20, 1977. Stanley E.G. Hillman was appointed trustee of the property of the Debtor on the February 13, 1978. Mr. Hillman was succeeded as Trustee by Richard B. Ogilvie on August 20, 1979. Mr. Hillman from the date of his appointment until August 20, 1979, and Mr. Ogilvie from that date until the present time, have continued in the possession and control of the property and assets of the Debtor and their operation.

3. On March 31, 1983, the Trustee filed with the Court an Amended Plan of Reorganization for the Debtor, which was referred to the Commission by order of this Court. After due notice and hearings, the Commission, in orders served September 26, 1984, and January 11, 1985, approved a modified version of the Trustee's plan.

4. On February 19, 1985, this Court, in Order No. 809, approved the sale of the Debtor's operating rail assets to the Soo Line Railroad Company and its affiliate The Milwaukee Road Inc., formerly SLRCO, Inc. (collectively "Soo") pursuant to the terms of an Asset Purchase Agreement ("APA") between the Trustee and Soo.

5. On April 10, 1985 the Commission, upon petition of the Trustee, issued a decision in which it ruled that

further modifications to the Trustee's Amended Plan need not be considered by the Commission.

6. On May 1, 1985, the Trustee filed with this Court his 1985 Plan of Reorganization for the Debtor (the "Plan"). The Plan recognized the sale of the operating assets to Soo but otherwise incorporated the essential provisions of the plan approved by the Commission. After due notice to creditors, stockholders and other parties in interest was given in accordance with Order No. 811, this Court held hearings, received evidence, and heard the arguments of counsel wishing to be heard on June 24, 25 and 27, 1985 for the purpose of considering approval and confirmation of the Plan.

7. Objections to the Plan and supporting briefs were filed by various parties in interest, including the Debtor and CMC; Soo; The United States of America; Chicago, Milwaukee, St. Paul and Pacific Bond and Debenture Holders Protective Committee ("Committee"); The First National Bank of Chicago (the "Indenture Trustee"); Stickney Corporation ("Stickney"); Pullman Leasing Company, GATX Corporation, Fruit Growers Express and Union Tank Car Company ("Trade Creditors"); Railroads as Creditors ("Interline Railroads"); Chessie System Railroad Co. ("Chessie"); Grand Trunk Western Railroad Co. ("GTW"); Harris Bank ("Harris") jointly with Continental Bank ("Continental"); Messrs. Spencer, Todhunter and Stevens ("Spencer"); Elroy G. Schoeneck; Railway Labor

Executives' Association ("RLEA"); Organization of Minority Vendors, Inc. ("OMVI"); Seaboard System Railroad, Inc. ("Seaboard"); Iowa Interstate Railroad, Inc. ("Iowa Interstate"); certain Counties of the State of Iowa ("Iowa Counties"); J. Howard Brosius; John M. Medvetz; William E. Bromsen, as Trustee for certain preferred stockholders; and Blake H. Schubert, as attorney for unidentified preferred stockholders. Oral objections were propounded at the hearings by the Escanaba and Lake Superior Railroad ("E&LS").

8. At the hearings, the following objections were withdrawn:

- (a) the objection of the Debtor and CMC to the provisions in Sections 6.1 of the Plan concerning the procedure for rejection of executory contracts; and
- (b) the objection of the Committee which had sought provision in the Plan for lost, stolen or misplaced certificates.

Seaboard withdrew its objections with respect to the provisions in the Plan concerning discharge of claims assumed by Soo and concerning bar dates and notice, while reserving its right to object to the proposed modifications to those provisions that were to be filed with the Court by the Trustee, the Debtor, CMC and Soo.



9. On June 27, 1985 the Trustee, the Debtor, CMC, and certain creditors filed proposed modifications to Sections 5.3 and 5.4 of the Plan, concerning the rates and the method of calculation of interest on Class A and Class C claims. On July 1, 1985 the Trustee, Soo, the Debtor and CMC filed proposed modifications to Sections 5.8, 10.2, 11.1 and 11.2 of the Plan, concerning discharge of claims, bar dates and notice. Due notice was given of these modifications and the time for filing of objections.

10. The Court has considered the certified record of proceedings before the Commission, the Commission's decisions of September 26, 1984, January 11, 1985 and April 10, 1985, the Plan, the objections to the Plan and proposed modifications filed with the Court and propounded orally at the hearing, the briefs filed by various parties, the evidence adduced at the hearings, and the arguments of counsel wishing to be heard.

11. With respect to the Committee's request for discovery with respect to the value of the Debtor's assets, the Court finds:

- a. The Committee is not entitled to further discovery pursuant to Bankruptcy Rule 8-705. Rule 8-705 does not apply to proceedings relating to approval or confirmation of a Section 77 plan of reorganization. Such proceedings are governed by Bankruptcy Rule 8-304;
- b. Section 77 and Bankruptcy Rule 8-304 do not contemplate de novo hearings before this Court with respect to valuation issues considered or which could have been considered

by the Commission, and accordingly there is no justification for allowing further discovery with respect to valuation issues, which could have been raised before the Commission. Ecker v. Western Pacific Railroad Corp., 318 U.S. 448, 473 (1943);

- c. Sufficient information with respect to value has been made available to the Committee in the certified record of the proceedings before the Commission, in publicly filed documents, and in interrogatory answers filed by the Trustee. The Court accordingly finds, in the exercise of its discretion to control discovery, that there is no justification for further discovery with respect to the issues raised by the Committee and that the record before this Court with respect to matters as to which discovery is sought is sufficient; and
- d. The Court does not see the relevancy or benefit to be gained by the Committee by granting further discovery. The request for discovery and for a continuance of the approval and confirmation hearing is therefore denied.

#### Bar Dates and Discharge of Claims

12. With respect to the objection of the United States of America seeking provision in the Plan for claims arising out of the government debt assumed by Soo under the APA, the Court rules that Order No. 809 relieved the Trustee from all obligations and liabilities with respect to the government debt assumed by Soo, and that the claims of the United States under that government debt accordingly are not entitled to treatment in the Plan.

-7-

13. With respect to the objection of RLEA seeking provision in the Plan for employees' claims under the Wage Deferral Agreement approved in this Court's Order No. 551, the Court finds that Order No. 809 relieved the Trustee from all obligations and liabilities with respect to those claims, which accordingly are not entitled to provision in the Plan.

14. With respect to the oral objection of E&LS seeking treatment under the Plan for claims arising out of trackage rights agreements assigned to Soo under the APA, the Court finds that Order No. 809 relieved the Trustee from all ~~obligations and~~ liability arising out of trackage rights agreements assumed by Soo, ~~and that any claims of E&LS arising out of those obligations are not entitled to treatment under the Plan.~~ *There*

15. With respect to OMVI's request for clarification of the treatment of claims asserted by OMVI in an action now pending in the United States District Court for the Northern District of Illinois, Eastern Division, the Court finds that the Trustee's obligations with respect to those claims were assumed by Soo and that Order No. 809 relieved the Trustee from all obligations and liabilities with respect to those claims, which accordingly are not entitled to treatment under the Plan.

16. With respect to the Iowa Counties' objection concerning the treatment of real property tax installments due after February 19, 1985, the Court finds that Order

No. 809 relieved the Trustee from all obligations and liabilities with respect to those taxes to the extent they relate to real property transferred to Soo, and that accordingly those claims are not entitled to treatment under the Plan. With respect to the Iowa Counties' other objections relating to treatment of claims for taxes and special assessments, the Court finds that the Plan adequately provides for those claims, to the extent they have not been assumed by Soo.

17. With respect to Iowa Interstate's objections concerning bar dates for claims against the Trustee in his individual capacity the Court finds that the Plan provides fair and adequate opportunity for Iowa Interstate to assert any claims it may have against the Trustee individually.

18. With respect to Seaboard's objection to the provisions for the discharge of the Trustee upon consummation, the Court finds that this objection is premature and should be denied without prejudice to Seaboard's right to object to discharge at the time discharge is considered by the Court.

19. The proposed modifications filed on July 1, 1985 by the Trustee, Soo, the Debtor and CMC proposed that Section 5.8, the last sentence of Section 10.2 and Section 11.1 and 11.2 of the Plan be modified as follows:

## 5.8 Termination of Right to Receive Payment Under the Plan

The rights of all security holders, creditors and claimants to receive payment under this Plan will terminate five years after the Consummation Date or, as to Claims asserted as of the Consummation Date but not finally settled or adjudicated until after the fourth anniversary of the Consummation Date, one year after the date of final settlement or adjudication. The holders of Allowable Claims who do not deliver certificates, properly endorsed with signature guaranteed, for cancellation with respect to Class B Claims or appropriate forms of release and satisfaction required by the Trustee with respect to all other Claims within the time specified in this Section 5.8 will not be entitled to participation under the Plan.

\* \* \*

## 10.2. Bar Date for Claims Against Trustee

. . . . Notice of the bar dates established in this Section 10.2 shall be published in The Wall Street Journal (national edition) not later than ten days after the Confirmation Date and not later than ten days prior to the Consummation Date, respectively.

\* \* \*

## XI. Bar of Claims Against Trustee as Trustee, the Debtor or the Estate

### 11.1 Bar Dates

In accordance with Orders 201 and 265, certain Pre-Petition Claims which were not filed with the Trustee on or before January 9, 1980 are barred and are not subject to treatment under this Plan. Pre-Petition and Post-Petition Claims against the Trustee in his capacity as Trustee, the Debtor or the Estate which have been filed in a form not satisfactory to the Trustee, or which have not been previously filed and are not barred by Orders 201 or 265, must be filed with the Court and served upon the Trustee not later than 60 days after the Confirmation Date or be forever barred. Any such Claim arising after the Confirmation Date but prior to the Consummation Date must be filed with the Court and served



upon the Reorganized Company not later than 30 days after the Consummation Date or be forever barred. Not later than ten days after the Confirmation Date the Trustee shall give notice of the first bar date provided in this Section 11.1 by mail to all claimants whose filings are not satisfactory to the Trustee, and to all persons or entities who the Trustee reasonably believes have a Claim against the Trustee in his capacity as Trustee, the Debtor or the Estate which has not previously been filed and is not barred by Orders 201 and 265. On or before the Consummation Date the Trustee shall give notice of the second bar date established in this Section 11.1 by mail to all persons or entities who the Trustee reasonably believes have a Claim against the Trustee in his capacity as Trustee, the Debtor or the Estate which has not previously been filed and is not barred by Orders 201 and 265 or by the first bar date established in this Section 11.1. Notice of the bar dates established in this Section 11.1 shall be published in The Wall Street Journal (national edition) not later than ten days after the Confirmation Date and not later than ten days prior to the Consummation Date, respectively.

#### 11.2 Scope of Bar

The bar dates provided in Section 11.1 apply to all Claims, including Claims for contribution or indemnity existing as of the Confirmation Date and the Consummation Date, respectively. The bar dates provided in Section 11.1, however, do not apply to claims for contribution or indemnity based on facts that are unknown, undisclosed and unasserted as of the Confirmation Date or the Consummation Date, respectively. Claims arising prior to the Consummation Date based on personal injury or death to any person who was a minor at the time of occurrence, as determined under the laws of the State of which he or she was then a resident, may not be asserted against the Reorganized Company unless timely filed by a person having the responsibility over the legal affairs or guardianship of that person. Claims which were the subject of lawsuits filed prior to the Consummation Date but which are not pending on the Consummation Date may not be reasserted subsequent to the Consummation Date, even if dismissal of the lawsuit was without prejudice and the time permitted for refiling has not run. The notices given in accordance with Section 11.1 above shall contain the information set forth in this Section 11.2.

The Court finds that these modifications represent a fair and equitable settlement between the Trustee, the Debtor, CMC and Soo, and that the Plan provisions, as modified, afford fair and equitable treatment to claimants and the Debtor's stockholders.

Accordingly, the Plan should be modified as proposed.

20. With respect to the objections of the Committee and the Indenture Trustee concerning the interest payable on the Debentures, the Court finds for the reasons set forth in the Court's Order No. 831 that the second paragraph of Section 5.4 of the Plan should be modified to read as follows:

"Interest with respect to Class B Claims will be paid as follows:

- (a) Interest at the rate of five percent per annum, without compounding, will be paid on the principal amount of the Debentures beginning on January 1, 1976, and continuing every year or portion of a year thereafter until the Distribution Date for Class B Claims, regardless of whether the Debtor had Available Net Income as that term is used in the Indenture;
- (b) Each unpaid annual installment of interest (as set forth in subparagraph (a)) shall itself constitute an Allowable Claim, which shall bear interest at the rates specified in Section 5.4 of the Plan for Class A and C Claims, beginning on the date each installment was due, and continuing every year or portion of a year thereafter until the Distribution Date for Class B Claims; and
- (c) Except as provided in subparagraphs (a) and (b), no other interest shall be paid on the principal of the Debentures or on the unpaid installments of interest."

21. With respect to the suggestion of the Debtor and CMC that the original maturity date of the Debentures be reinstated, the Court finds that under Section 77 this Court has the equitable power, in appropriate circumstances, to cure defaults under long-term debt instruments and to

reinstate the original maturity date, but that under the circumstances of this reorganization, that exercise of this power with respect to the Debtor's Debentures is not appropriate.

22. The proposed modifications filed on July 27, 1985 by the Trustee, the Debtor, CMC and certain <sup>actively participating</sup> creditors proposed that Section 5.3 and the first paragraph of Section 5.4 of the Plan be modified as follows:

### 5.3 Calculation of Interest

Each allowable Claim will be entitled to interest, calculated as provided in this Section and Section 5.4 below. Interest and related charges will be calculated at the rates provided by the Plan from a date a Claim is liquidated until (1) the Distribution Date, in the case of Claims finally allowed, settled or adjudicated prior to the applicable Distribution Date, or (2) the date of payment, in the case of other Claims. The liquidation date shall be deemed the date upon which the principal amount of the Claim is ascertainable from the Trustee's records. With respect to Claims which were liquidated prior to December 19, 1977, the liquidation date shall be deemed December 19, 1977.

### 5.4 Interest Rate

Interest with respect to Class A and Class C Claims will be calculated in accordance with Section 5.3 above at the rate of seven and one-half per cent (7-1/2%) per annum, without compounding from the date of liquidation to February 19, 1985. From February 20, 1985 to the Distribution Date (in the case of Claims finally allowed, settled or adjudicated prior to the applicable Distribution Date), or to the date of payment (in the case of other Claims) interest will be calculated at the rate of interest currently being earned on the funds of the estate held in escrow accounts in the name of the Trustee. The current rate of 8.5% shall be applied from February 20 through September 1, 1985. The Trustee, the Debtor or claimants entitled to interest may make application to have this rate altered prospectively for periods beginning after September 1, 1985 in the event the interest then being earned on funds of the estate should warrant a change.

With respect to these proposed modifications, the Court finds that:

- a. The proposed modifications represent a fair and equitable settlement between the Trustee, the Debtor, CMC and most of the creditors filing objections to the rates and manner of calculation of interest provided in the Plan. The proposed modifications are the result of extended negotiations conducted by able and experienced counsel for the Debtor, CMC and the creditors who have been most active in these proceedings. In re Penn Central Transportation Co., 354 F. Supp. 710, 715 (E.D.Pa. 1972);
- b. It is in the best interests of the Debtor, the Estate, and the creditors to have all these matters immediately and finally resolved. Id.
- c. In light of the claims asserted, the prevailing interest rates, the losses suffered by the Estate during the reorganization, the varying statutory rates that apply in states of residence of claimants, and the decision of the Rock Island reorganization court with respect to interest rates, the rates and method of calculation provided in the proposed modifications are fair and equitable to all creditors in Classes A and C.

Accordingly, the Plan should be modified as proposed.

23. With respect to the claims of the United States and the Iowa Counties for interest and penalties on their claims for taxes at rates higher than the interest rates provided for other claims in Classes A and C, the Court finds that penalties are not properly assessable for delay of tax payments occasioned by the reorganization, In re Penn Central Transp. Co., 458 F. Supp. 1234, 1281 (E.D. Pa. 1978); and that the interest rates provided in Sections 5.3 and 5.4 of the Plan, as modified, are fair and equitable and are applicable to both sets of claims.

24. With respect to the objections of Elroy G. Schoeneck seeking interest on Class A personal injury claims at a rate higher than provided for other unsecured creditors, the Court finds that the priority status of the personal injury claimants does not entitle them to higher rates of interest on their claims, and personal injury claimants should accordingly receive interest at the same rates as other unsecured creditors.

25. With respect to the objections of Iowa Interstate seeking pre-judgment interest the Court finds that claims for pre-judgment interest are appropriately resolved as part of the resolution of disputed claims.

26. With respect to the objections of Harris and Continental seeking interest on advances, the Court finds that Harris, Continental and other indenture trustees and committees may assert their claims for interest on advances as part of the procedure provided in Section 9.1 of the Plan for allowance of claims for fees and expenses under Section 77(e). Accordingly, the last two sentences of Section 5.4 of the Plan should be deleted. This does not constitute a finding that they are entitled to interest. With respect to the oral objection of counsel for Stickney concerning the time for filing applications under Section 9.1 of the Plan, the Court finds that the Plan should be amended to provide that such applications may be filed on or before one week after the Trustee files his modified Plan in accordance with ordering paragraph 4 below.



Other Objections of Creditors

27. With respect to the objections of RLEA, MDOT, Iowa Counties and Iowa Interstate concerning the Plan's treatment of disputed claims, the Court finds that:

- a. Under Section 77 a plan of reorganization is not required to specify the resolution and treatment of each individual claim against the Estate, but to provide due recognition of the rights of each class of creditors; and
- b. The Plan provides fair and adequate means for resolving disputed claims.

28. With respect to the objections of the Committee and Iowa Interstate concerning the adequacy of the Segregated Account to protect claimants whose claims are to be paid by the Reorganized Company, the Court finds that these objections premature, and accordingly should be denied without prejudice to the rights of these claimants to seek appropriate provision for their asserted claims in the Segregated Account at the time it is established.

29. With respect to the request of the Committee and the Interline Railroads that the Plan be submitted to them for voting, the Court finds that the Plan, as modified in accordance with this Order, will provide for cash payment to all creditors of an amount equal to the full value of their claims, and, in accordance with Section 77(e), need not be submitted for voting to any class of creditors.

30. With respect to the objections of preferred stockholders, the Court finds that the Plan provides for no change in the interests of the preferred stockholders, but continues the rights of those stockholders in full force and effect, and accordingly the Plan provides fair and equitable treatment of their interests.

General Findings

31. The Plan, as modified in accordance with this Order, complies with the requirements of Section 77(b).

32. The Plan, as modified,

- a. is fair and equitable;
- b. affords due recognition to the rights of each class of creditors and stockholders;
- c. does not discriminate unfairly in favor of any class of creditors or stockholders;
- d. conforms to the requirements of the law regarding the participation of the various classes of creditors and stockholders; and
- e. provides for the payment of all costs of administration and all other allowances made, or to be made, by the Court.

33. The approximate amounts to be paid by the Debtor or the Reorganized Company for expenses and fees incident to the reorganization have been fully disclosed to the extent ascertainable, are reasonable, and are within such maximum limits fixed by the Commission. Additional amounts as may be required to be paid out of the Debtor's Estate or by the Reorganized Company for services performed

and expenses and fees incurred incident to the reorganization and the Plan will be subject to the approval of this Court.

34. The Plan, as modified in accordance with this Order, provides for the payment of all claims of the United States for taxes and the United States is not a creditor on any claims for customs duties.

35. The additional findings and conclusions of law, not inconsistent with the provisions of this Order, made pursuant to Rule 52 by the Court orally on June 24, 25 and 27, 1985 are incorporated in this Order by reference and made a part of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Plan, with the modifications specified in the above findings, and with such other modifications as may be necessary to conform to the above findings, is hereby approved.

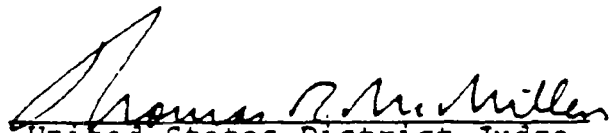
2. The Plan, as so modified, is hereby confirmed.

3. Objections to the Plan and the amendments proposed by the Trustee and other parties are allowed to the extent consistent with the above findings and the modifications specified herein. All other objections to the Plan and the proposed modifications are denied.

4. That the Trustee is directed to file with the Court, on or before July 29, 1985, a modified Plan in conformity with this Order.

5. The Trustee is directed to provide notice by mail of the approval and confirmation of the Plan, as modified, to all parties on the Official Service List, and all creditors and stockholders. The Trustee is further ordered to publish, as soon as possible after filing with this Court a modified Plan, notice of the approval and confirmation once in The Wall Street Journal (national edition). The notices provided by mail and in The Wall Street Journal shall also contain notice of the bar dates for claims provided in the Plan.

ENTER

  
United States District Judge

DATED: JUL 12 1935





IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In the Matter of	)	
	)	
CHICAGO, MILWAUKEE, ST. PAUL	)	In Proceedings for
AND PACIFIC RAILROAD COMPANY,	)	the Reorganization of
	)	a Railroad
Debtor.	)	
	)	No. 77 B 8999
	)	Thomas R. McMillen, Judge

ORDER NO. 869

Upon consideration of the matter of the sale, pursuant to Sections 4 and 5(b) of the Milwaukee Railroad Restructuring Act ("MRRRA"), notice having been given to all parties, of the Rail Assets, as defined in and pursuant to an Asset Purchase Agreement dated April 6, 1984, as amended (the "APA"), to be entered into between Richard B. Ogilvie, not personally, but solely as trustee ("Trustee") of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee") and the Soo Line Railroad Company, a Minnesota corporation ("Soo"), and SLRCO, Inc., a Minnesota corporation ("SLRCO"), the Court, acting as the Court of Reorganization for the Milwaukee pursuant to Section 77 of the Bankruptcy Act of 1898 and pursuant to Section 4 and Section 5(b) of the MRRRA finds and concludes as follows:

1. Soo and SLRCO filed an application with the Interstate Commerce Commission (the "Commission") seeking approval of a purchase of the Rail Assets. In addition, Chicago and North Western Transportation Company ("CNW") filed its application seeking the purchase of essentially similar assets.

2. The Commission rendered its decision on September 26, 1984 with respect to the application of Soo and SLRCO to purchase the assets specified in the APA. That decision, inter alia, approved the application pursuant to Section 11344(b) of the Interstate Commerce Act, Section 5(b) of the MRRA, and Section 77 of the Bankruptcy Act of 1898. The Commission served its further decision with respect to CNW's modified application on January 11, 1985, which decision incorporated certain portions of its September 26, 1984 decision.

3. The Court has <sup>considered</sup> ~~heard~~ the evidence adduced, <sup>known</sup> ~~the~~ arguments of counsel, and the oral and written applications of various parties in interest seeking review of and commenting upon the Commission's September 26, 1984 and January 11, 1985 decisions, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and Mobil Oil Corporation, the

Commission, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, CNW, the Chicago, Milwaukee, St. Paul and Pacific Railroad Bond and Debenture Holders Protective Committee (the "Protective Committee"), Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, North Dakota Public Service Commission, Seaboard System Railroad, Inc., Harold E. Spencer, Peter N. Todhunter and Richard James Stevens, State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees for the Milwaukee".

4. Section 5(b)(2) of the MRRRA empowers this Court to review the order of the Commission entered under that Section only under Sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of the United States Code. The Commission has certified to this Court the full record of proceedings before it in connection with the decision of September 26, 1984 and the decision of January 11, 1985. The Court has considered and reviewed the findings and decisions of the Commission filed with this Court, pursuant to the requirements of those sections. The Court has further considered the allegations of error contained in

the petitions for review and comments and has found that the Commission's findings and decisions should be and are approved by this Court, since the findings and decisions were in accordance with law and were not arbitrary, capricious, an abuse of discretion, contrary to constitutional right, power, privilege or immunity, in excess of statutory jurisdiction, authority or limitations, short of statutory right, or without observance of procedure required by law.

5. The Court has <sup>considered</sup> ~~heard~~ the evidence adduced, <sup>heard</sup> ~~the~~ arguments of counsel, and the oral and written arguments of various parties in interest expressing a preference for or objecting to the approval of the sale to either the Soo and SLRCO or CNW, including those of the Trustee, Burlington Northern Railroad Company, Chicago Milwaukee Corporation, Escanaba and Lake Superior Railroad Company, First National Bank of Chicago (as Indenture Trustee), Grand Trunk Corporation, Bruce E. Hendry and the Mobil Oil Corporation, LaSalle National Bank (as Successor Corporate Trustee), the City of Milwaukee, Wisconsin, North Dakota Public Service Commission, CNW, the Protective Committee, Railway Labor Executives' Association, Soo, States of Iowa, Minnesota and Wisconsin Departments of Transportation, Stickney Corporation, the United States, United Transportation Union Local No. 528, Wisconsin Power and Light Company, Green Hills Regional Planning Commission, Seaboard System Railroad,

Inc., State of Missouri, South Dakota Department of Transportation, Coalition to Save The Milwaukee and "Certain Employees of the Milwaukee". The Court has considered the Commission's findings with respect to the public interest, the Commission's vote and basis for its preference for the Soo and SLRCO over CNW, the consideration to be paid to the Debtor's estate, the amount of wages to be paid to employees and other relevant matters. The prompt sale of the Rail Assets to Soo and SLRCO for the continued provision of common carrier service in return for the consideration specified in the APA (including the assumption of certain liabilities of the Milwaukee's estate) is in the best interest of the Milwaukee's estate and of ultimate reorganization of the Milwaukee, and is consistent with the public interest. ~~Soo and SLRCO are bona fide purchasers within the meaning of Rule 8-703 of the Bankruptcy Rules of the Supreme Court of the United States.~~

6. The immediate execution by the Trustee of the APA, and the prompt closing of the transactions in the manner and time contemplated by the APA, are in the best interests of the Milwaukee's estate.

7. The Trustee has issued certain Trustee Certificates during the course of these proceedings which were purchased by the United States Department of Transportation ("DOT") and the Federal Financing Bank pursuant to Sections



505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 and Section 7 of the MRRA. The estate also is liable to the DOT under the terms of its Series I Redeemable Preference Shares issued in 1977 prior to the Milwaukee's filing for reorganization. The Trustee's obligations under the above Trustee Certificates and under the Preference Shares ~~may~~<sup>will</sup> be assumed at closing by Soo and SLRCO in the manner provided in the APA. 771-

(1) 8. The purchase of the Rail Assets together with prior purchases approved by this Court constitute the purchase of substantially all of the Milwaukee Railroad for purposes of Section 7(h)(1)(B) of the MRRA (as amended by Section 701(c)(1) of the Staggers Rail Act of 1980), 45 USC §906(h)(1)(B), and all obligations to the United States or any agency or instrumentality of the United States incurred pursuant to Section 7 of the MRRA by the Milwaukee or the Trustee, including Trustee Certificates 1980 A and B are waived and cancelled.

9. The sale of the Rail Assets and the assignment and assumption of the trackage agreements, joint facilities and operating rights over segments of the rail properties now operated by the Trustee are in the public interest (as determined by the Commission and affirmed by this Court) and are in the best interest of the estate as

found by this Court. The assignment and assumption of the trackage agreements, interests in or agreements with respect to joint facilities, leases, operating rights and all other rights and interests of the Trustee being assigned pursuant to the APA will not effect a termination of the Trustee's rights and interests under the contracts, leases and agreements granting those rights and interests, and those rights and interests are ~~fully~~ assignable to Soo and SLRCO in accordance with the terms of the APA, and notwithstanding any provisions in any such contracts, leases or agreements to the contrary. the

10. Section 5 of the MRRRA mandates that the Court require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under Section 11347 of title 49 of the United States Code. In prior sales of lines of railroad pursuant to Section 5, the Court imposed "Appendix B Conditions" (report of the Special Master dated February 20, 1980) which were found to be as protective as statutorily required and consistent with both the scheme and language of the MRRRA by the Court of Appeals for the Seventh Circuit in Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Consolidated Appeals of Railway Labor Executives' Association, 658 F.2d 1149 (7th Cir. Aug. 17, 1981), cert. den. 455 U.S. 1000 (Mar. 8, 1982).

11. Section 5 of the MRRRA does not require that labor protective conditions be imposed with respect to employees of The Milwaukee Motor Transportation Company, and the Court finds that such conditions ~~are unnecessary~~ <sup>should not be imposed.</sup>

12. The additional findings and conclusions of law, not inconsistent with the provisions of this Order, made pursuant to Rule 52 by the Court orally on February 8, 1985, are incorporated in this Order by reference and made a part of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the sale and assignment to Soo and SLRCO, in accordance with the APA and this Order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects. The Rail Assets shall, upon conveyance, be free and clear of all liens, security interests, claims and encumbrances, of whatever nature, whenever arising, including without limitation those arising from federal, state and local tax claims or liens, those arising from that certain First Mortgage dated as of January 1, 1944 with Continental Illinois National Bank and Trust Company of Chicago, Indenture Trustee, and the General Mortgage dated as of January 1, 1944 with Harris Trust and Savings Bank, Indenture Trustee, and all mortgages supplemental thereto, except only liens, security interests,

claims and encumbrances created by, or specifically permitted to remain on the Rail Assets pursuant to, the APA.

(1) 2. That the Trustee is authorized and directed to execute promptly and deliver to Soo and SLRCO the APA, to consummate promptly the sale as set forth in the APA and to execute and deliver on or as soon as practicable after the Closing Date (as defined in the APA), all deeds, bills of sale, assignments, certificates of title, and other documents, and to take such other actions, as shall be required or appropriate to effectuate the transactions contemplated by the APA, including to the extent necessary under the circumstances as determined by the Trustee, modifications to the APA or the transaction required to result in a fully taxable transaction, so that for federal income tax purposes gain or loss will be fully recognized by the Milwaukee on the consummation of the sale, and that the net operating loss carry forwards and tax credits available to the Milwaukee immediately prior to the closing of the sale will be preserved to the Milwaukee.

3. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all of his rights under contracts as provided by the APA.

4. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate and in accordance with the APA, all of the trackage agreements, joint facili-

ties and operating rights necessary for Soo or SLRCO, as the case may be, to operate the Railroad (as defined in the APA).

5. That the Trustee is authorized and directed to assign to Soo or SLRCO, as appropriate, all labor contracts (including collective bargaining agreements) with respect to employees of the Trustee required by the APA to be offered employment by Soo or SLRCO.

6. That Soo and SLRCO, or either of them, assume each of the obligations and liabilities arising under the contracts or agreements assigned by the Trustee in accordance with paragraphs 3, 4 and 5 of this Order. In addition, Soo and SLRCO, or either of them, shall assume the Trustee's obligations under the Wage Deferral Agreement and the last two sentences of Paragraph 2b of the Wage Reduction Agreement, as specified in the APA as modified in the December 4, 1984 letter agreement between the Soo and the Trustee, the obligations of the Trustee under the Trustee Certificates issued to DOT and the Federal Financing Bank pursuant to Sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 or Section 7 of the MRRRA (excluding Trustee Certificates 1980 A and B), the obligations with respect to the Series I Redeemable Preference Shares, the obligations of the Trustee with respect to any labor conditions imposed with respect to the transactions contemplated by the APA and other obligations and liabilities



of the Trustee to be assumed by Soo and SLRCO, or either of them, pursuant to the APA. After the Closing (as defined in the APA), all obligations and liabilities of the Trustee to be assumed by Soo or SLRCO in accordance with this Order or the APA and not otherwise discharged shall be the sole obligation of Soo or SLRCO, or both, as the case may be, and the Trustee and the Milwaukee shall be relieved from any and all liabilities in connection with or arising out of such obligations except as expressly may be provided otherwise by the APA, whether occurring after the Closing or arising out of the conveyance or assignment; provided, however, the foregoing shall not impose on Soo or SLRCO any liability or obligation not imposed upon or assumed by them in accordance with the terms of the APA.

7. That all prepetition obligations and debts of the Trustee and Debtor and its subsidiaries to Soo and its subsidiaries are cancelled. In addition, all outstanding debts and obligations of the Trustee and Debtor and any of its subsidiaries arising out of facilities embargoed or abandoned prior to Closing are cancelled.

8. That the sale, transfer and assignment of the Rail Assets is without warranties, representations or guaranties of any kind, expressed or implied, except as specifically stated in the APA.

9. That upon consummation of the transactions contemplated by the APA, all common carrier obligations of the Trustee and Debtor be assumed by Soo and SLRCO, and shall cease as to the Trustee and Debtor.

10. Subject to the agreement of Soo and SLRCO with representatives of employees to labor protection conditions at least as protective as those specified below, the conditions contained in Appendix B to the Report of the Special Master dated February 20, 1980 are adopted for the protection of employees of Soo and Milwaukee Road affected by the transactions contemplated by the APA; Section 4(e) is included therein as specified in Order No. 276B; Appendix B is also modified as provided in Order No. 409A. Notwithstanding the foregoing, no labor protective conditions are imposed with respect to the employees of The Milwaukee Motor Transportation Company.

11. That the Court shall retain jurisdiction over this matter for the purpose of implementing and carrying out the APA and resolving any disputes arising under or with respect to the APA, this Order or the Closing. The ICC shall have such continuing jurisdiction over this transaction as is by law vested in it.

12. That the rights, claims, liens and interests of any creditor of, or claimant against, the Debtor's estate which are not assumed by Soo or SLRCO in accordance with

this Order or adjudicated by this Order as applying to the Rail Assets which are sold, transferred or assigned pursuant to this Order shall be, upon the Closing, transferred from the Rail Assets to the net proceeds of the sale; such net proceeds shall, until further order of this Court, be deposited and retained in the existing trust account bearing the designation "Escrow Agent Account" No. 13-01043-4 at the Continental Illinois National Bank and Trust Company of Chicago and shall be invested pursuant to this Court's Order No. 536 in accordance with instructions from the Trustee or a person designated by him.

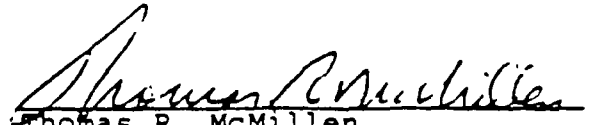
13. That following the closing of the sale and pending the earlier of (i) further order of this Court, (ii) the date on which this Order authorizing the sale shall not have been reversed and no further appeal may be taken by any party or (iii) 90 days after the Closing Date, Soo and SLRCO are directed to conduct the operations of the Railroad, (as defined in the APA), and to maintain the Rail Assets, subject to additions and dispositions in the ordinary course, on a basis reasonably designed to account for the operations of the Railroad and the identification of the Rail Assets subsequent to their transfer to Soo and SLRCO.

14. All requests for relief pertaining to the subject matter of this Order not otherwise granted by this Order shall be considered denied.

15. Directions contained in this Order shall be carried out forthwith.

Dated:

ENTER

  
Thomas R. McMillen  
United States District Judge

Feb. 19, 1985

JUDGMENT IN A CIVIL CASE

United States District Court	DISTRICT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION
CASE TITLE IN THE MATTER OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,  Debtor	DOCKET NUMBER 77 B 8999
	NAME OF JUDGE OR <del>CLERK</del> THOMAS R. MC MILLEN

☐ Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to ~~hearing~~ hearing before the Court with the judge (~~magistrate~~) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

the sale and assignment to Soo and SLRCO, in accordance with the APA and this order, of the Trustee's right, title and interest in the Rail Assets are approved and confirmed in all respects.

CLERK H. STUART CUNNINGHAM	DATE Feb. 19, 1987
BY DEPUTY CLERK <i>Edleen Branch</i>	



RAMSEY COUNTY  
Public Health Department  
Raymond G. Cink, Director  
  
Environmental Health Division  
1910 W. County Rd. B. - Room 209  
Roseville, Mn. 55113  
  
633-0316 — 298-5972

June 20, 1985

Mr. Gene Verdic  
City of St. Paul  
873 North Dale  
St. Paul, MN 55103

Dear Gene:

Here are the results of the analysis of the street sweepings. As you may recall, we took a sample of the sweepings on March 22, 1985, from freshly-deposited piles at the site near Rivoli and Minnehaha. We sampled fresh piles only to avoid questions about the source of contamination (other materials have been deposited at the site) or alteration of the levels of contamination (losses from leaching or additions from atmospheric depositions). Hence, we may want to get a sample of the fall street sweepings (i.e., leaves) to see how they compare to the sandier spring sweepings. In the meantime, bear in mind that these results are probably a "worst-case" situation, since they represent material which had been on the street longer (on the average) than the fall leaves would be.

The results of the analysis of the street sweepings sample are given in the attached table. Although lead was the only parameter of concern, other parameters were analyzed for two reasons. One, the other parameters were tested to make sure that they really weren't a problem also. Two, some of the parameters, such as pH and chloride content, have a bearing on the evaluation of the lead problem. Plus, this sample was brought to the test laboratory along with a batch of compost samples, so the same set of parameters were analyzed for all samples for the sake of simplicity.

The test results confirm that, for the parameters tested, lead is the only one of concern. It is interesting to note the low chloride content, since it has been thought that more road salt would be present. The lead result is 660 parts per million (ppm) on a dry-weight basis. This result would be lower if the material has been analyzed on an "as-received" basis, or in its naturally damp condition, since the moisture content would have the effect of "diluting" the lead concentration. This effect would not be very great for the sand, as its' moisture absorption and retention capabilities are quite low.

In evaluating the current disposal method for the street



Mr. Gene Verdic  
Page 2  
June 20, 1985

sweepings, there are a number of issues which must be addressed but few criteria which would apply. First, EPA guidelines on lead contamination state that garden soils up to 500 ppm are considered safe. Above 500 ppm, special precautions should be taken to minimize uptake by garden plants, especially by maintaining pH levels above 6.5 and adding organic matter. Organic compounds bind lead, making it less available. You have effectively done this by alternating layers of fall sweepings (leaves) with the spring sweepings. Above 2,000 ppm, it is recommended that the soil not be used for gardens but instead should be removed or covered with sod. In light of these guidelines and the location of the site, it does not appear that public exposure is a serious problem.

Strictly speaking, the street sweepings are classified as a solid waste under the Ramsey County Solid Waste Ordinance, and as such should be disposed at an approved facility. The current site is not an approved facility. Since it looks as if you are starting to run out of space at the current site, perhaps the most reasonable approach to this issue is to start planning now to phase out that site and we can explore other options. It runs counter to our waste abatement policies to insist that this material, essentially just sand and leaves, be brought to a landfill for disposal. I think we can find another alternative, especially bearing in mind that the lead contamination should decrease as leaded gasoline is phased out of use. Unfortunately, we would not be able to include the fall sweepings in the compost program unless its' lead level proves to be quite low (less than 50 ppm). On the other hand, you may want to consider a separate compost site, with the end product used on boulevards or roadsides where the benefit from organic matter binding lead would balance the detriment of the material's lead content.

Finally, there is the possibility that the spring street sweepings may be classified as a hazardous waste. One of the classification tools for hazardous waste is the EP Toxicity Test. This test is a leach procedure used to determine the potential for a material to contaminate ground water when that material is placed in a landfill environment. A more appropriate test may be the ASTM Water Leach Test, which attempts to simulate monofill (one material only) conditions where the leaching is caused by infiltration of rainwater instead of landfill leachate. This test, is not widely recognized as a classification tool, although the MPCA does occasionally use it. The EP Toxicity Test has a 20 to 1 dilution rate built into it and the limit for lead in the EP leachate is 5 milligrams per

Mr. Gene Verdic  
Page 3  
June 20, 1985

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As I mentioned above, the County is willing to work with the City of St. Paul to address this disposal problem. We can understand that it may take time to set up a proper alternative site, but feel that the current site should be phased out. Bear in mind that the current site should be covered with a few feet of clean soil and seeded so that vegetative cover will help stabilize the site. Covering the site will help ease concerns about future exposure.

If you have any questions, please feel free to call me at 633-0316. Otherwise, I will be in touch in the fall to check on sampling the street sweeping.

Sincerely,



Richard J. Hlavka  
Solid Waste Planner

RJH/gt

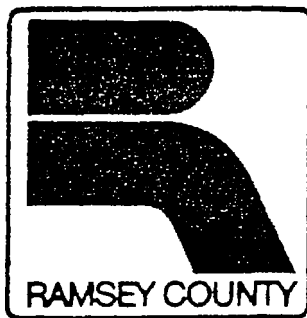
cc: Bill Regan, MPCA  
Richard Person, Public Works

TABLE 1  
- Test Results -

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22, 1985

<u>Parameter</u>	<u>Result</u>
Lead	660
Aluminum	5,480
Boron	<0.30
Calcium	15,300
Cadmium	<0.30
Chloride	136
Chromium	18.8
Copper	23.0
Iron	22,200
Magnesium	6,940
Manganese	656
Nickel	14.6
Nitrogen	1,100
Phosphorous	264
Potassium	816
Sodium	431
Sulfur	780
Zinc	255
pH	8.4

All results are given in ppm (except pH), on a dry-weight basis.  
10,000 parts per million (ppm) = 1%



RAMSEY COUNTY  
Public Health Department  
Raymond G. Cink, Director

Environmental Health Division  
1910 W. County Rd. B. - Room 209  
Roseville, Mn. 55113

633-0316 — 298-5972

*Ramsey Cty. File 13*  
*13-12*  
*13-12*  
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June 20, 1985

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June 20, 1985

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN THE MATTER OF  
CHICAGO, MILWAUKEE, ST. PAUL  
AND PACIFIC RAILROAD COMPANY,  
DEBTOR

IN PROCEEDINGS FOR THE REORGANIZATION  
OF A RAILROAD

Docket No. 77 B 8999

The Honorable Thomas R. McMillen, Judge Presiding

TRUSTEE'S MODIFIED 1985  
PLAN OF REORGANIZATION  
(As Approved and Confirmed By Order 832)

RICHARD B. OGILVIE, Trustee  
547 West Jackson Boulevard  
Suite 1510  
P. O. Box 6205  
Chicago, Illinois 60680-6205

July 12, 1985

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## TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS .....	1
II. INTRODUCTION .....	2
2.1 History of the Proceeding .....	2
2.2 Description of Plan .....	3
2.3 Basis for Proposal of Plan .....	3
2.3(a) Resources and Application .....	3
2.3(b) Schedule for Distribution to Creditors .....	3
III. CLASSIFICATION OF CLAIMS AND STOCKHOLDERS' INTERESTS	
3.1 Classification .....	3
3.1(a) Class A: Expenses of Administration .....	3
3.1(b) Class B: Debentures .....	3
3.1(c) Class C: General Unsecured Claims .....	4
3.1(d) Class D: Fees and Expenses .....	4
3.1(e) Class E: Preferred Stock .....	4
3.1(f) Class F: Common Stock .....	4
IV. DESCRIPTION OF THE REORGANIZED COMPANY	
4.1 The Reorganized Company .....	4
4.2 Capitalization of the Reorganized Company .....	4
4.3 Assets of the Reorganized Company .....	4
4.4 Management of the Reorganized Company .....	4
V. SATISFACTION OF CLAIMS AND STOCKHOLDERS' INTERESTS	
5.1 Treatment of Claims and Interests .....	4
5.1(a) Classes A, B and C: Creditors' Claims .....	5
5.1(b) Class D: Fees and Expenses .....	5
5.1(c) Class E: Preferred Stock .....	5
5.1(d) Class F: Common Stock .....	5
5.2 Method of Distribution .....	5
5.3 Calculation of Interest .....	5
5.4 Interest Rate .....	5
5.5 Pre-Condition to Distributions Pursuant to the Plan .....	6
5.6 Claims Undetermined as of Consummation Date .....	6
5.7 Segregated Account .....	6
5.8 Termination of Right to Receive Payment Under the Plan .....	6
VI. EXECUTORY CONTRACTS	
6.1 Rejection and Participation Under the Plan .....	7
6.2 Discharge of Obligations Under Executory Contracts Assumed by Others .....	7
VII. VESTING OF ASSETS AND DISCHARGE	
7.1 Property to Be Vested Free and Clear of Liens .....	7
7.2 Discharge of Obligations .....	7
VIII. EXECUTION OF THE PLAN	
8.1 Approval and Confirmation of the Plan .....	7
8.2 Consummation Procedure .....	8

	<u>Page</u>
8.3 Employment of Agents .....	8
8.4 Retention of Jurisdiction by the Court .....	8
IX. FEES AND EXPENSES	
9.1 Allowance of Fees and Expenses .....	8
X. DISCHARGE OF TRUSTEE	
10.1 Discharge as of Consummation Date .....	8
10.2 Bar Date for Claims Against Trustee .....	9
XI. BAR OF CLAIMS AGAINST TRUSTEE, THE DEBTOR OR THE ESTATE	
11.1 Bar Dates .....	9
11.2 Scope of Bar .....	9
XII. MISCELLANEOUS	
12.1 Statement or Explanation Not Warranty or Representation .....	10
12.2 Notice .....	10
12.3 Table of Contents and Section Headings Not Controlling .....	10
12.4 Exhibit .....	10

## I. DEFINITIONS

As used in this Plan of Reorganization with initial capitalization, the following words have the meanings set forth below, except where a different meaning is clearly indicated or required by the context:

- 1.1 **"Allowable Claim"** means a Claim which is ultimately determined by the Court to be properly payable out of the Estate under applicable law, including interest in the amount, if any, provided by the Plan or allowed by the Court.
- 1.2 **"Asset Purchase Agreement"** means the agreement between the Trustee and Soo dated April 6, 1984, as amended, which provided for the acquisition of the Debtor's operating rail system by Soo.
- 1.3 **"Bankruptcy Act"** means the Bankruptcy Act of 1898, as amended.
- 1.4 **"Claim"** means a claim against the Trustee in his capacity as Trustee, the Debtor or the Estate as defined in Section 77(b) of the Bankruptcy Act (including claims arising under certificates issued pursuant to Section 77(c)(3) of the Bankruptcy Act and claims for fees and expenses under Sections 77(c)(2) and 77(c)(12) of the Bankruptcy Act), whether arising Post-Petition or Pre-Petition.
- 1.5 **"Confirmation Date"** means July 12, 1985.
- 1.6 **"Consummation"** means the carrying out of all acts and procedures contemplated by the Plan, commencing with the Confirmation Date.
- 1.7 **"Consummation Date"** means the date fixed by order of the Court on which legal and beneficial ownership of the Estate's assets will be vested in the Reorganized Company.
- 1.8 **"Court"** means the United States District Court for the Northern District of Illinois, Eastern Division, which has jurisdiction over the Debtor's reorganization proceeding.
- 1.9 **"Debentures"** means the Debtor's 5% Income Debentures, Series A, due 2055, issued pursuant to an indenture dated January 1, 1955 ("Indenture").
- 1.10 **"Debtor"** means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, which is in reorganization under Section 77 of the Bankruptcy Act, in the Court's Docket No. 77 B 8999.
- 1.11 **"Distribution Date"** means a date fixed by the Trustee for distribution to claimants of a particular class in accordance with Section 5.2 of the Plan.
- 1.12 **"Estate"** means all of the Debtor's assets, businesses and properties which are subject to the Court's jurisdiction in this reorganization proceeding.
- 1.13 **"Plan"** means this 1985 modified plan of reorganization.
- 1.14 **"Post-Petition"** means the period subsequent to the filing of the petition to reorganize the Debtor on December 19, 1977 and prior to the Consummation Date.
- 1.15 **"Pre-Petition"** means the period before the filing of the petition to reorganize the Debtor on December 19, 1977.
- 1.16 **"Reorganized Company"** means the Debtor, with appropriate amendments to its articles of incorporation to change its corporate name, which will be vested with the assets of the Estate pursuant to the Plan on the Consummation Date.
- 1.17 **"Segregated Account"** means the escrow account described in Section 5.7 of this Plan established for the purpose of securing payment of Allowable Claims after the Consummation Date.
- 1.18 **"Soo"** means collectively the Soo Line Railroad Company, a Minnesota corporation, and its affiliate The Milwaukee Road Inc. (formerly SLRCO, Inc.), a Minnesota corporation.
- 1.19 **"Trustee"** means Stanley E. G. Hillman, qualified as Trustee on February 13, 1978, as succeeded by Richard B. Ogilvie on August 20, 1979, in their respective capacities as trustees of the property of the Debtor, and each duly-appointed successor.

## II. INTRODUCTION

On February 19, 1985, the Soo acquired pursuant to the Asset Purchase Agreement the Debtor's operating rail properties for \$192,000,000 in cash and the assumption of approximately \$395,000,000 in long-term and other liabilities calculated on an Interstate Commerce Commission Accounting Basis. The cash portion of the purchase price is subject to certain retroactive adjustments which the Trustee estimates will not in the aggregate be material. The sale to the Soo represents the culmination of the disposition of the Debtor's operating railroad properties, other than approximately 85 miles of track and right of way situated in the Chicago, Illinois vicinity, which are operated by the Soo for freight service and the Northeast Illinois Regional Commuter Railroad Corporation for commuter service. The Trustee and the Debtor have no continuing obligations for the operation of any rail services. The proceeds realized by the Trustee from the sale to the Soo, coupled with assumption by the Soo of approximately \$395,000,000 in obligations, has permitted the Trustee to propose this Plan, which if consummated will result in the discharge of the Debtor from reorganization after providing for the full payment in cash of all Allowable Claims. The Plan contemplates substantial completion of the reorganization proceedings by December 31, 1985.

### 2.1 History of the Proceeding

On December 19, 1977, after three years of heavy losses, the Debtor, a Class I transcontinental railroad, filed its petition for reorganization under Section 77 of the Bankruptcy Act. At that time the Debtor operated a system of nearly 10,000 route miles in the Midwest and across the northern tier states to the Pacific Northwest. The petition was approved on December 20, 1977 and Stanley E. G. Hillman was appointed as Trustee on February 13, 1978. Mr. Hillman was succeeded as Trustee by Richard B. Ogilvie on August 20, 1979.

Subsequent to filing for reorganization, the Debtor continued to sustain heavy losses. In 1979 Mr. Ogilvie determined that the revitalization of the entire 10,000-mile system was not practical. Accordingly, in that year the Trustee, under the direction of the Court, instituted an aggressive program of abandoning unprofitable lines and restoring profitability to a 3,900-mile midwestern "core" system. The shedding of unprofitable lines, together with the intensive efforts of the Trustee and his staff to improve the railroad's traffic base and reduce costs, resulted in the core system's return to profitability in 1983.

Along with the abandonment and sale of unprofitable lines, the Trustee also pursued a program of selling other excess property. This program, which included the sale in 1981 of approximately 117,000 acres of timber properties owned by the Debtor's subsidiary the Milwaukee Land Company, on very favorable terms to the Estate (approximately \$178,000,000 in cash), substantially contributed to the viable restructuring of the Debtor's rail system and the Trustee's present ability to satisfy the Allowable Claims of all creditors.

In April of 1984, pursuant to Court authorization, the Trustee negotiated asset purchase agreements for the sale of the operating rail properties with two competing bidders, the Soo and Chicago and North Western Transportation Company. Both agreements were approved by the Interstate Commerce Commission and returned to the Court for a decision on which should be approved and consummated. The Soo's Asset Purchase Agreement was approved by the Court, and the transactions contemplated by the Asset Purchase Agreement were closed on February 19, 1985.

As a result of these programs and transactions, the asset and debt restructuring of the Debtor is virtually complete. Evaluations of remaining non-rail properties and the planned sale of the remaining rail properties will continue prior to the Consummation Date. However, no further property dispositions or restructuring is required for the discharge of the Debtor from the reorganization proceeding, and the return to the stockholders of a company with substantial cash, other properties and assets, and essentially no debt.

As of the Consummation Date the assets of the Reorganized Company will consist principally of cash, securities and interests in real property. Various plans for the development and implementation of a business plan for the utilization of these assets could be proposed. The Trustee has chosen not to propose any specific business plan for the Reorganized Company in this Plan as he believes this is a matter which is better left to the new management and stockholders of the Reorganized Company.



## 2.2 Description of Plan

Most of the Estate's obligations to the United States government and other obligations relating to the operation of the core system have been assumed by Soo. The assumed obligations include outstanding indebtedness issued pursuant to Sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, together with the obligations under the Debtor's Series I Redeemable Preference Stock. The remaining Allowable Claims will be paid in cash, to the extent practicable on or before the Consummation Date. No Claim will be satisfied by the issuance of securities.

On the Consummation Date the remaining assets of the Estate will be returned to the Debtor, which will continue in existence as the Reorganized Company. After the Consummation Date the Reorganized Company will continue making cash payments to creditors entitled to payment, out of the Segregated Account.

## 2.3 Basis for Proposal of Plan

### 2.3(a) Resources and Application

As of June 30, 1985 the Trustee held approximately \$263,000,000 in cash and cash equivalents in the property escrow accounts established by orders of the Court, together with approximately \$28,000,000 in tax benefit transfer escrow accounts. In addition the Milwaukee Land Company held as of that date approximately \$100,000,000 in cash and cash equivalents. After giving effect to the estimated results of the Estate's operations to July 31, 1985, and assuming no significant sales of properties during that period, approximately \$393,000,000 will be available as of July 31, 1985 for payment of Allowable Claims. Allowable Claims as of July 31, 1985 are shown on the attached Exhibit I and are estimated to be approximately \$205,000,000. After payment of all Allowable Claims, a significant amount of cash and cash equivalents together with various interests in real properties, including approximately 63,000 acres of real estate and timber properties, will be available for transfer to the Reorganized Company in satisfaction of the stockholders' interests. Assuming no significant property sales subsequent to June 30, 1985, the Trustee also estimates that the Reorganized Company will have available as of the Consummation Date, after giving effect to the expenses of completing the reorganization, a net operating loss carryover in excess of \$252,000,000, which may be used to offset future taxable income of the Reorganized Company and its parent Chicago Milwaukee Corporation. These tax benefits, if not utilized, will expire in varying amounts from 1995 through 2000. The Trustee also estimates that the Reorganized Company will have available unused investment tax credits as of the Consummation Date of approximately \$24,000,000. These credits will be available to offset future federal income tax liability of the Reorganized Company and Chicago Milwaukee Corporation. These credits will, if not utilized, expire in varying amounts from 1989 through 1998.

### 2.3(b) Schedule for Distribution to Creditors

Between the Confirmation Date and the proposed Consummation Date, the Trustee will pay Allowable Claims that are not disputed, together with fees and expenses approved in accordance with Section 9.1 below.

## III. CLASSIFICATION OF CLAIMS AND STOCKHOLDERS' INTERESTS

### 3.1 Classification

For the purposes of this Plan, the classification of Claims and the interests of the Debtor's stockholders is as follows:

**3.1(a) Class A: Expenses of Administration:** Class A consists of Allowable Claims (other than Claims in Classes B and D) which are treated as expenses of administration, including Claims of the Debtor's employees under the January 1, 1982 Wage Reduction Agreement, Claims of state and local taxing authorities for taxes, special assessments and other governmental charges relating to the Post-Petition period, and Pre-Petition personal injury claims.

**3.1(b) Class B: Debentures:** Class B consists of Allowable Claims of the holders of the Debtor's Debentures.

3.1(c) *Class C: General Unsecured Claims*: Class C consists of Allowable Claims (other than the Claims in Classes A, B and D) which are unsecured, including Pre-Petition Claims of general trade creditors and Pre-Petition tax Claims, rejected contract claims and traditional labor protection claims.

3.1(d) *Class D: Fees and Expenses*: Class D consists of the fees and expenses approved in accordance with Section 9.1 below.

3.1(e) *Class E: Preferred Stock*: Class E consists of the interests of the holders of the Debtor's Preferred Stock.

3.1(f) *Class F: Common Stock*: Class F consists of the interests of the holders of the Debtor's Common Stock.

#### IV. DESCRIPTION OF THE REORGANIZED COMPANY

##### 4.1 The Reorganized Company

For convenience, simplicity and economy in carrying out this Plan, the Debtor will continue in existence as the Reorganized Company. Prior to the Consummation Date the Debtor's articles of incorporation will be amended to change its corporate name. This change is required by the Asset Purchase Agreement.

##### 4.2 Capitalization of the Reorganized Company

The Reorganized Company will retain the same equity structure as the present Debtor. The equity structure of the present Debtor is the same as that of the Debtor prior to reorganization, except that the Debtor's Series I Redeemable Preference Shares were cancelled and the underlying obligations assumed by the Soo pursuant to the Asset Purchase Agreement. All capitalized debt and other obligations of the Debtor which were not assumed by the Soo will be discharged or paid prior to the Consummation Date. No new securities will be issued by the Reorganized Company as part of the Plan.

##### 4.3 Assets of the Reorganized Company

As of the Consummation Date the Reorganized Company will be vested with, and will be legal and beneficial owner of, all assets of the Debtor as of that date (subject to the applicable restrictions on assets retained in the Segregated Account and assets retained in the tax benefit transfer escrow referred to in Section 2.3 above), including books, files, records and other papers relating to the reorganization proceeding which are determined by the Trustee to belong to the Debtor. The Reorganized Company's ownership of all its assets will be free and clear of all liens and encumbrance of any kind or character, except as provided in the Plan or by order of the Court.

##### 4.4 Management of the Reorganized Company

The by-laws of the Debtor provide for a number of directors between 9 and 14. Prior to the Consummation Date the Trustee will recommend to the Court the appointment of 9 individuals to serve as directors until the first meeting of shareholders of the Reorganized Company. Prior to the Consummation Date the Trustee will continue to manage the affairs of the Estate, subject to the control of the Court. The Trustee's staff presently consists only of employees of Soo who work at the offices of the Trustee on a contract basis in accordance with the Asset Purchase Agreement. Prior to the Consummation Date, the Trustee anticipates that some permanent employees may be retained. In general, however, the identification and employment of a permanent staff and management will be the responsibility of the Reorganized Company.

#### V. SATISFACTION OF CLAIMS AND STOCKHOLDERS' INTERESTS

##### 5.1 Treatment of Claims and Interests

For purposes of this Plan, the treatment of Claims and the interests of the Debtor's stockholders is as follows, subject to changes directed or authorized by the Court.

**5.1(a) Classes A, B and C: Creditors' Claims:** The Allowable Claims in Classes A, B and C will be paid in cash, with interest as provided in Section 5.3 and Section 5.4, as soon as practicable after the Confirmation Date.

**5.1(b) Class D: Fees and Expenses:** Fees and expenses approved by the Court as Class D Allowable Claims pursuant to Section 9.1 below will be paid in cash on or before the Consummation Date.

**5.1(c) Class E: Preferred Stock:** The holders of the interests of Class E will continue as holders of the preferred stock of the Reorganized Company. Certificates outstanding as of the Consummation Date will continue to evidence the same number of shares of Preferred Stock of the Reorganized Company.

**5.1(d) Class F: Common Stock:** The holders of the interests in Class F will continue as holders of the common stock of the Reorganized Company. Certificates outstanding as of the Consummation Date will continue to evidence the same number of shares of Common Stock of the Reorganized Company.

## 5.2 Method of Distribution

After the Confirmation Date the Trustee will begin distributions to creditors. The Trustee will establish a Distribution Date for each class of Claims, which will be the earliest date on which the holders of Allowable Claims in that class are entitled to receive payment under the Plan. Different Distribution Dates may be fixed for different classes of Claims. The Distribution Dates will in no event be later than the Consummation Date.

The Trustee before the Consummation Date and the Reorganized Company after the Consummation Date will distribute the payments to the holders of Allowable Claims under the Plan on and after the applicable Distribution Dates. Distributions to holders whose Claims are finally allowed, settled or adjudicated following the Distribution Date shall take place in the manner set forth in Sections 5.6 and 9.1. Disputes as to the allowability, amount or classification of any Claim shall not delay distributions with respect to undisputed Claims, subject to the provisions of Section 5.5 below. Distributions to creditors will be made against delivery of certificates, properly endorsed with signature guaranteed with respect to Class B Claims, and against appropriate forms of release and satisfaction required by the Trustee with respect to all other Claims.

## 5.3 Calculation of Interest

Each allowable Claim will be entitled to interest, calculated as provided in this Section and Section 5.4 below. Interest and related charges will be calculated at the rates provided by the Plan from a date a Claim is liquidated until (1) the Distribution Date, in the case of Claims finally allowed, settled or adjudicated prior to the applicable Distribution Date, or (2) the date of payment, in the case of other Claims. The liquidation date shall be deemed the date upon which the principal amount of the Claim is ascertainable from the Trustee's records. With respect to Claims which were liquidated prior to December 19, 1977, the liquidation date shall be deemed December 19, 1977.

## 5.4 Interest Rate

Interest with respect to Class A and Class C Claims will be calculated in accordance with Section 5.3 above at the rate of seven and one-half percent (7½ %) per annum, without compounding, from the date of liquidation to February 19, 1985. From February 20, 1985 to the Distribution Date (in the case of Claims finally allowed, settled or adjudicated prior to the applicable Distribution Date), or to the date of payment (in the case of other Claims) interest will be calculated at the rate of interest currently being earned on the funds of the Estate held in escrow accounts in the name of the Trustee. The current rate of 8.5% shall be applied from February 20 through September 1, 1985. The Trustee, the Debtor or claimants entitled to interest may make application to have this rate altered prospectively for periods beginning after September 1, 1985 in the event the interest then being earned on funds of the Estate should warrant a change.

Interest with respect to Class B Claims will be paid as follows:

(a) Interest at the rate of five percent per annum, without compounding, will be paid on the principal amount of the Debentures beginning on January 1, 1976, and continuing every year or portion

of a year thereafter until the Distribution Date for Class B Claims, regardless of whether the Debtor had Available Net Income as that term is used in the Indenture;

(b) Each unpaid annual installment of interest (as set forth in subparagraph (a)) shall itself constitute an Allowable Claim, which shall bear interest at the rates specified in Section 5.4 of the Plan for Class A and C Claims, beginning on the date each installment was due, and continuing every year or portion of a year thereafter until the Distribution Date for Class B Claims; and

(c) Except as provided in subparagraphs (a) and (b), no other interest shall be paid on the principal of the Debentures or on the unpaid installments of interest.

Interest is not applicable to the interests of the holders of the Debtor's Preferred and Common Stock (Class E and Class F Claims).

### **5.5 Pre-Condition to Distributions Pursuant to the Plan**

Except as otherwise provided in agreements made by the Trustee and approved by the Court, no claimant of any class shall be entitled to any distribution pursuant to this Plan unless all claims which the Debtor or the Trustee has against the claimant or any affiliate of the claimant are settled or discharged.

### **5.6 Claims Undetermined as of Consummation Date**

Claims in favor of the Debtor and the Trustee not settled or determined prior to the Consummation Date will be assumed and enforced by the Reorganized Company. Any Allowable Claim against the Debtor or the Trustee which is filed prior to the applicable bar date described in Section 9.1, 10.2 or 11.2 below and included in a class entitled to participation under the Plan which has not been finally settled or adjudicated prior to the Consummation Date shall be entitled to be treated under this Plan as if it had been settled or adjudicated prior to the Consummation Date. The obligations of the Trustee and the Reorganized Company to the holders of these Claims will be limited to the participation provided in the Plan. This Section 5.6 shall not be interpreted as affecting the date of liquidation of a Claim for purposes of calculating the amount of interest payable on that Claim.

### **5.7 Segregated Account**

As of the Consummation Date, cash or cash equivalents in an amount to be determined by the Trustee with the approval of the Court will be deposited in an escrow account (the "Segregated Account") for the purpose of securing and effecting payment of Allowable Claims not paid or settled by that date. Funds in the Segregated Account shall be invested consistent with the directions and limitations to be provided by Court order. Income earned with respect to the funds in the Segregated Account shall be paid to the Reorganized Company.

After the Consummation Date funds in the Segregated Account will be used at the direction of the Reorganized Company only to pay Allowable Claims, and will not be subject to withdrawal for any other purpose without prior approval of the Court. The principal amount of funds to be maintained in the Segregated Account may be modified from time to time upon application to the Court by the Reorganized Company. The Segregated Account will continue in existence until the termination of the right to receive payment under the Plan in accordance with Section 5.8 below. Any funds remaining at that time will be transferred to the Reorganized Company free of the restrictions of the Segregated Account and free and clear of any right, title, and interest of any other person or entity, the escheat or abandoned property laws of any state to the contrary notwithstanding.

### **5.8 Termination of Right to Receive Payment Under the Plan**

The rights of all security holders, creditors and claimants to receive payment under this Plan will terminate five years after the Consummation Date or, as to Claims asserted as of the Consummation Date but not finally settled or adjudicated until after the fourth anniversary of the Consummation Date, one year after the date of final settlement or adjudication. The holders of Allowable Claims who do not deliver certificates, properly endorsed with signature guaranteed, for cancellation with respect to Class B Claims or appropriate

forms of release and satisfaction required by the Trustee with respect to all other claims within the time specified in this Section 5.8 will not be entitled to participation under the Plan.

## VI. EXECUTORY CONTRACTS

### 6.1 Rejection and Participation Under the Plan

Prior to the Consummation Date the Trustee will from time to time file with the Court exhibits listing all the executory contracts to be rejected as part of the Plan in accordance with Section 77(b) of the Bankruptcy Act. On the Consummation Date the contracts listed in those exhibits will be rejected effective as of December 19, 1977, the date of the filing of the Debtor's petition for reorganization under Section 77. All executory contracts not listed in the exhibit to be filed with the Court have been assumed by the Soo or other parties pursuant to agreements with the Trustee or will be adopted by the Trustee as of December 19, 1977 and will become obligations of the Reorganized Company, to be performed in accordance with their terms. Claims arising out of rejected executory contracts will be treated as Class C Claims. The Trustee shall give notice prior to or as of the Consummation Date to all parties to rejected contracts in a form prescribed by the Court.

### 6.2 Discharge of Obligations Under Executory Contracts Assumed by Others

→ The Trustee, the Debtor and the Reorganized Company shall be discharged from all obligations which have been assumed by others, including the Soo, under agreements with the Trustee entered into during the pendency of the reorganization proceedings, and from all claims based on or arising out of a failure to perform those obligations. Claims with respect to or arising out of those obligations are disallowed and are not included as Claims subject to treatment under the Plan. The holders of these claims shall not receive the notice prescribed in Section 6.1 above with respect to the rejection of executory contracts.

## VII. VESTING OF ASSETS AND DISCHARGE

*notice  
disallowed*

### 7.1 Property to Be Vested Free and Clear of Liens

All property, when conveyed to the Reorganized Company, will be free and clear of all liens and claims against the Debtor and the Trustee, except as otherwise specifically provided in this Plan or by Court order. The Court may require the Trustee, the Debtor, the trustee of any instrument securing any obligation of the Debtor, any mortgagee, and any other proper and necessary parties, to make transfers, conveyances or satisfactions of mortgages in recordable form, and may require the Debtor to join in the transfers, conveyances or satisfactions which are necessary to expedite the Consummation and the vesting of title in the Reorganized Company.

### 7.2 Discharge of Obligations

All liabilities and obligations of the Trustee and the Debtor, all claims (whether asserted or not) and all liens, security interests and encumbrances on the property of the Debtor, will be discharged as of the Consummation Date, except as expressly provided in this Plan or by order of the Court.

## VIII. EXECUTION OF THE PLAN

### 8.1 Approval and Confirmation of the Plan

After hearings as provided in Section 77(e) of the Bankruptcy Act, held on June 24, 25, 27 and July 12, 1985, the Court on July 12, 1985 entered Order 832 modifying the plan filed by the Trustee on May 1, 1985, approving and confirming the Plan and authorizing the Trustee to proceed with Consummation.

## **8.2 Consummation Procedure**

The Debtor and the Trustee, subject to the supervision of the Court, have the authority to carry out the Plan and the orders of the Court relating to the Plan in accordance with their respective terms, notwithstanding any contrary laws of any state or the decision or order of any state authority. The Trustee will promptly proceed with the Consummation and generally to wind up the reorganization proceedings. The Trustee will have the authority to take all steps necessary or appropriate to Consummation, including provision for staff, disposition of assets of the Estate, and other action considered by the Trustee to be necessary or appropriate to insure that the funds required for Consummation are available when required and that the other assets of the Estate are appropriately managed. The Trustee will determine all forms, instructions, letters of transmittal, and similar instruments used in effecting distributions under the Plan.

## **8.3 Employment of Agents**

In the Consummation of the Plan, the Trustee may employ agents, transfer agents, registrars, trustees, depositories, exchange agents, accountants, attorneys, financial advisors, and others as he considers necessary or appropriate. The Trustee may from time to time delegate to others any power or discretion conferred upon him by the Plan.

## **8.4 Retention of Jurisdiction by the Court**

The Court will retain exclusive jurisdiction under Section 77 of the Bankruptcy Act over the assets dealt with by the Plan, and over any persons appearing in the reorganization proceedings, for the purposes of determining any Claims asserted by or against the Debtor or the Trustee, construing any order in respect of the Plan, carrying out and giving effect to the provisions of the Plan and the orders confirming the Plan, fixing terms and conditions relating to Consummation, and entering the final decree. The Court may cure any defect, supply any omission, or reconcile any inconsistency in the manner and to the extent necessary or expedient in order to carry out the Plan effectively. On the Consummation Date, the reorganization proceedings will be terminated, and a final decree will be entered by the Court pursuant to Section 77(f) of the Bankruptcy Act discharging the Trustee and closing the case, subject to the reservation of jurisdiction by the Court as provided in this Section 8.4.

# **IX. FEES AND EXPENSES**

## **9.1 Allowance of Fees and Expenses.**

After Confirmation the Court will consider applications for allowance of fees and expenses to the Trustee, his staff and counsel, and other parties claiming fees and expenses pursuant to Paragraphs (c)(2) and (c)(12) of Section 77 of the Bankruptcy Act, other than fees and expenses previously approved by the Court, whether or not paid. These applications are required to be filed on or before August 5, 1985 and will be referred to the Special Master previously appointed in these proceedings for hearing beginning on September 4, 1985. The Special Master will report his recommendations to the Court on or before September 30, 1985 and the Court will issue a final order or orders awarding fees and expenses on or before October 31, 1985. Applications submitted under this Section shall reflect requests for allowance of fees through the Consummation Date except that applications by the Trustee and his counsel for fees and expenses from August 1, 1985 through the Consummation Date may be filed with the Court not later than five days prior to the Consummation Date.

# **X. DISCHARGE OF TRUSTEE**

## **10.1 Discharge as of Consummation Date**

As of the Consummation Date the Trustee shall be discharged and his bond released, and he shall be relieved of any further duties and responsibilities (other than the preparation and filing of a final report) in respect of the administration of the property or the conduct of the business and affairs transferred to the Reorganized Company on the Consummation Date.



## 10.2 Bar Date for Claims Against Trustee

Any claim or action of any nature arising prior to the Confirmation Date against the Trustee individually, arising out of the conduct of his office as Trustee, must be filed with the Court and served upon the Trustee and all parties in interest not later than sixty days after the Confirmation Date or be forever barred. Any such claim which arises after the Confirmation Date but prior to the Consummation Date shall be filed with the Court and served upon the Trustee and the Reorganized Company not later than thirty days after the Consummation Date or be forever barred. Any such claim or action shall be in writing and shall state with particularity the nature of the claim or action and the relief sought. Notice of the bar dates established in this Section 10.2 shall be published in *The Wall Street Journal* (national edition) not later than ten days after the Confirmation Date and not later than ten days prior to the Consummation Date, respectively.

## XI. BAR OF CLAIMS AGAINST TRUSTEE AS TRUSTEE, THE DEBTOR OR THE ESTATE

### 11.1 Bar Dates

In accordance with Orders 201 and 265, certain Pre-Petition Claims which were not filed with the Trustee on or before January 9, 1980 are barred and are not subject to treatment under this Plan. Pre-Petition and Post-Petition Claims against the Trustee in his capacity as Trustee, the Debtor or the Estate which have been filed in a form not satisfactory to the Trustee, or which have not been previously filed and are not barred by Orders 201 or 265, must be filed with the Court and served upon the Trustee not later than 60 days after the Confirmation Date or be forever barred. Any such Claim arising after the Confirmation Date but prior to the Consummation Date must be filed with the Court and served upon the Reorganized Company not later than 30 days after the Consummation Date or be forever barred. Not later than ten days after the Confirmation Date the Trustee shall give notice of the first bar date provided in this Section 11.1 by mail to all claimants whose filings are not satisfactory to the Trustee, and to all persons or entities who the Trustee reasonably believes have a Claim against the Trustee in his capacity as Trustee, the Debtor or the Estate which has not previously been filed and is not barred by Orders 201 and 265. On or before the Consummation Date the Trustee shall give notice of the second bar date established in this Section 11.1 by mail to all persons or entities who the Trustee reasonably believes have a Claim against the Trustee in his capacity as Trustee, the Debtor or the Estate which has not previously been filed and is not barred by Orders 201 and 265 or by the first bar date established in this Section 11.1. Notice of the bar dates established in this Section 11.1 shall be published in *The Wall Street Journal* (national edition) not later than ten days after the Confirmation Date and not later than ten days prior to the Consummation Date, respectively.

### 11.2 Scope of Bar

The bar dates provided in Section 11.1 apply to all Claims, including Claims for contribution or indemnity existing as of the Confirmation Date and the Consummation Date, respectively. The bar dates provided in Section 11.1, however, do not apply to claims for contribution or indemnity based on facts that are unknown, undisclosed and unasserted as of the Confirmation Date or the Consummation Date, respectively. Claims arising prior to the Consummation Date based on personal injury or death to any person who was a minor at the time of occurrence, as determined under the laws of the State of which he or she was then a resident, may not be asserted against the Reorganized Company unless timely filed by a person having the responsibility over the legal affairs or guardianship of that person. Claims which were the subject of lawsuits filed prior to the Consummation Date but which are not pending on the Consummation Date may not be reasserted subsequent to the Consummation Date, even if dismissal of the lawsuit was without prejudice and the time permitted for refile has not run. The notices given in accordance with Section 11.1 above shall contain the information set forth in this Section 11.2.

## **XII. MISCELLANEOUS**

### **12.1 Statement or Explanation Not Warranty or Representation**

No statement or explanation contained in this Plan constitutes a warranty or representation or a condition to the binding effect of this Plan upon confirmation by the Court upon any creditor or claimant. No defect or error in this Plan, and no change in the estimates and assumptions underlying the allocation and distribution of payment as outlined in this Plan will release any creditor or claimant from the terms of and obligations under this Plan.

### **12.2 Notice**

Whenever notice is to be given under this Plan, the Court will designate the time within which, the persons to whom, and the form and manner in which the notice will be given. All notices will be given by the Trustee.

### **12.3 Table of Contents and Section Headings Not Controlling**

The table of contents and the section headings contained in this Plan are for convenience only and will not control the meaning or interpretation of this Plan or any of its provisions.

### **12.4 Exhibit**

The following exhibit is attached to and made a part of this Plan.

Exhibit I. Estimated Schedule of Allowable Claims.

Respectfully submitted,

RICHARD B. OGILVIE

Trustee of the Property of the  
Chicago, Milwaukee, St. Paul and Pacific  
Railroad Company, Debtor.

**ESTIMATED SCHEDULE OF ALLOWABLE CLAIMS<sup>1</sup>**  
(dollar amounts stated in millions)

This schedule contains estimates of the aggregate amounts of Allowable Claims. Actual payments to be made pursuant to Court orders may vary from these estimates. Additionally, this schedule is subject to revision as a consequence of disputed claim settlements and accounts receivable offsets.

<u>Class</u>	<u>Description of Claim</u>	<u>Unaudited Estimated Claim As of 7/31/85</u>
<i>Expenses of Administration</i>		
A	Provisions for continuing administration and deferred post-petition expenses . . . . .	\$ 7.0
A	Post-petition taxes <sup>2</sup> . . . . .	5.7
A	Pre-petition personal injury claims <sup>2</sup> . . . . .	3.5
A	Claims under Wage Reduction Agreement <sup>3</sup> . . . . .	35.0
<i>Unsecured Claims</i>		
B	Income Debentures	
	—principal . . . . .	55.6
	—interest . . . . .	<u>35.1</u>
	—total . . . . .	90.7 90.7
C	Pre-petition trade creditors	
	—principal . . . . .	32.9
	—interest . . . . .	<u>18.9</u>
	—total . . . . .	51.8 51.8
C	Pre-petition taxes <sup>2</sup> . . . . .	5.4
C	Rejected contract claims . . . . .	3.0
C	Traditional labor protection claims <sup>2 3</sup> . . . . .	<u>2.5</u>
<i>Total Allowable Claims<sup>1</sup> . . . . .</i>		<u>\$204.6</u>

**Notes**

1. Does not include Class D Claims
2. Exclusive of any interest.
3. Exclusive of any payroll tax obligations, if applicable. In the event of payroll tax liability, such taxes could amount to approximately \$7.9 million.

**MATTER OF CHICAGO, MILWAUKEE, ST. PAUL, & PACIFIC 1281**

Cite as 789 F.2d 1281 (7th Cir. 1986)

Miller was not making a full premium payment on a timely basis throughout the year, it was not entitled to receive an interest credit for those unpaid premiums.<sup>15</sup> Thus we hold that Prudential did not assess interest against Miller's account in violation of the 31-day interest grace period contained in the Policy.

The decision of the district court is **AF- FIRMED** and costs are awarded to Pruden- tial.



**In the Matter of CHICAGO, MILWAU- KEE, ST. PAUL, AND PACIFIC RAILROAD COMPANY, Debtor.**

**Appeal of CMC REAL ESTATE CORPORATION.**

**Escanaba & Lake Superior Railroad Company, Appellee.**

No. 85-2729.

United States Court of Appeals,  
Seventh Circuit.

Argued May 5, 1986.

Decided May 8, 1986.

Railroad which had been granted right of first refusal to buy line of track of bankrupt railroad filed demand for arbitra- tion against railroad which bid on bankrupt railroad's assets for damages caused by bankrupt railroad's delay in transferring line to plaintiffs. The United States Dis- trict Court for the Northern District of Illinois, Thomas R. McMillen, J., refused to grant bankrupt railroad's motion for de- claratory judgment that demand to arbi- trate pretransfer damages was inconsistent with order partitioning asset of bankrupt

15. Further, a company in Prudential's position can certainly offer inducements, such as an interest credit, in order to encourage policy-

holders to make prompt premium payments on or before the date their premium payments are due.

Reversed.

### Arbitration ⇐23

Bankrupt railroad which sold its rail assets to another railroad also transferred its liabilities and duty to arbitrate under agreement granting third railroad right of first refusal to buy line of track and some trackage rights.

Barry Sullivan, Jenner & Block, Chicago, Ill., for appellant.

Terrance M. Cullen, Felhaber, Larson, Fenlon & Vogt, St. Paul, Minn., for appel- lee.

Before BAUER, POSNER, and EAST- ERBROOK, Circuit Judges.

EASTERBROOK, Circuit Judge.

The bankrupt Chicago, Milwaukee, St. Paul & Pacific R.R. got out of the railroad business in February 1985, when it sold all of its rail assets to the Soo Line R.R. The Soo and other railroads bid for the rail assets of the Milwaukee as a bloc, and the district court ordered them sold on that basis. This caused problems because the Escanaba & Lake Superior R.R. held a right of first refusal to buy a line of track between Crivitz and Marinette, Wisconsin, and some trackage rights on to Menominee, Michigan. The agreement granting the Es- canaba this right of first refusal contains an arbitration clause.

The Escanaba filed at least three de- mands for arbitration, one against the Soo and two against the Milwaukee. An earlier appeal dealt with the first demand against the Milwaukee. Before the district court

holders to make prompt premium payments on or before the date their premium payments are due.

entered Order No. 809, which directed the sale of the rail assets to the Soo, an arbitration panel held that the transfer would violate the Escanaba's right of first refusal. Order No. 816 substituted the Soo for the Milwaukee in this arbitration, on the ground that the rail assets the Soo had acquired included liabilities as well as assets. The "asset purchase agreement" controlling who got what transferred to the Soo all "[o]bligations with respect to litigation and claims against the Milwaukee relating to the Railroad." We affirmed this decision, holding that the Crivitz-Marquette line is part of the "Railroad" defined in Order No. 809 and the asset purchase agreement. *In re Chicago, Milwaukee, St. Paul & Pacific R.R.*, 784 F.2d 831, 834 (7th Cir.1986). Order No. 809 partitioned the Milwaukee into a rail division (which the Soo acquired) and a real estate division (now named CMC Real Estate Corp.). Liabilities arising out of the rail operations of the Milwaukee before this mitosis belong to the Soo, we held, and the Soo therefore had to assume the Milwaukee's role in the arbitration even though the liabilities (if any) had arisen, and the arbitration was well underway, before the entry of Order No. 809.

The second demand for arbitration met a different fate in the district court. The Escanaba demanded arbitration of damages caused by the Milwaukee's delay in transferring the line to the Escanaba. The Escanaba maintains that the Milwaukee's decision to sell the rail assets as a bloc triggered its right of first refusal, giving it 60 days to buy the line, and that it is entitled to damages caused by the fact that it did not acquire the line until January 1986, after the arbitration panel fixed the price and a district court in Minnesota confirmed the award. See 784 F.2d at 835. (We were informed at oral argument that the Soo has dismissed its appeal of this decision, so the Escanaba is now the undisputed owner of the line.) The Milwaukee asked the district court for a declaratory judgment that the demand to arbitrate pre-transfer damages is inconsistent with Order No. 809. The district judge refused to

grant this relief, stating in Order No. 839: "We do not understand any theory by which the Trustee [of the Milwaukee] can transfer to the Soo Railroad his obligation to arbitrate unless the [Escanaba] agrees and the Soo Railroad assumes the obligation. These voluntary acts have presumably not been taken, otherwise this Complaint would not have been filed."

The "voluntary acts" to which the court referred have occurred. The Milwaukee's liability, if there is any, to the Escanaba under the arbitration agreement is one arising out of the Milwaukee's rail operations, as opposed to its real estate operations. The asset purchase agreement partitioned the Milwaukee's liabilities along with its assets, and the liabilities follow the assets. The Soo acquired the Crivitz-Marquette line as part of the "Railroad" (the defined term discussed in our previous opinion). The Soo therefore acquired the Milwaukee's liabilities arising out of this line of track. The asset purchase agreement, together with Order No. 809 and Order No. 832 (which confirmed the plan of reorganization and discharged all of the Milwaukee's liabilities not otherwise provided for), relieved the Trustee of liabilities of this kind.

The Milwaukee is no longer responsible for liabilities arising out of its former rail operations, except for liabilities expressly preserved by the asset purchase agreement and orders of the district court. The Soo got the whole contract between the Milwaukee and the Escanaba, including, as we held before, trackage rights, a right of first refusal, and an arbitration clause. The Milwaukee therefore need not arbitrate with the Escanaba. The Soo has whatever liabilities the Milwaukee shucked, and the duty to arbitrate is in the contract creating these liabilities. The Escanaba has made a request for arbitration against the Soo. We need not decide what the Soo's liabilities to the Escanaba are, if the Soo has any. We hold only that when the Milwaukee sold its rail assets to the Soo, it trans-

## UNITED STATES v. NEAL PHARMACAL CO.

1283

Cite as 789 F.2d 1283 (8th Cir. 1986)

ferred the rail liabilities and the duty to arbitrate as well.

REVERSED.



UNITED STATES of America,  
Appellant,

v.

NEAL PHARMACAL  
COMPANY, Appellee.

No. 85-1294.

United States Court of Appeals,  
Eighth Circuit.

Submitted Nov. 15, 1985.

Decided April 8, 1986.

Rehearing and Rehearing En Banc  
Denied May 29, 1986.

United States appealed from an order of the Bankruptcy Court confirming a Chapter 11 reorganization plan. The United States District Court for the Eastern District of Missouri, 46 B.R. 721, Edward L. Filippine, J., affirmed, and the United States appealed. The Court of Appeals, Lay, Chief Judge, held that: (1) under section which provides that debtor may defer payment of priority tax claims pursuant to Chapter 11 plan only if creditor receives interest rendering payments equivalent to present value of claim, bankruptcy court's adoption of current rate paid on 13-week treasury bills at time of each quarterly payment, without consideration of risk of nonpayment, length of payment period and existence of collateral, was contrary to prevailing market rate approach; (2) interest rate paid by taxpayers on delinquent tax claims is relevant to determination of proper interest rate on deferred payments of priority tax claim, but before concluding that such rate will provide government with present value of its federal tax claim, court must first consider payment period, quality of security, if any, and risk of de-

fault in particular case; and (3) record was insufficient to determine prevailing market rate on loan comparable to deferral of the Internal Revenue Service's priority tax claim, thus requiring remand.

Remanded with directions.

### 1. Bankruptcy § 640.100

Under § 1129(a)(9)(C), which provides that debtor may defer payment of priority tax claims pursuant to Chapter 11 plan only if creditor receives interest rendering deferred payments equivalent to present value of claim, bankruptcy court's adoption, as most accurate estimate of government's borrowing costs, the current rate paid on 13-week treasury bills at time of each quarterly payment, without consideration of risk of nonpayment, length of payment period and existence of collateral, was contrary to prevailing market rate approach, and thus was improper. Bankr. Code, 11 U.S.C.A. §§ 507(a)(7), 1101 et seq., 1129(a)(9)(C).

### 2. Bankruptcy § 640.100

Section 1129(a)(9)(C), which provides that debtor may only defer payment of priority tax claims pursuant to Chapter 11 plan if creditor receives interest on claim rendering deferred payments equivalent to present value of claim, contemplates use of a fixed interest rate, rather than a floating interest rate, in light of requirement that present value be determined as of effective date of plan and fact that floating interest rate would be administratively difficult and would complicate determination of feasibility of reorganization plan. Bankr. Code, 11 U.S.C.A. §§ 507(a)(7), 1101 et seq., 1129(a)(9)(C).

### 3. Bankruptcy § 640.100

Interest rate paid by taxpayers on delinquent tax claims under 26 U.S.C.A. § 6621 is relevant to determination of proper interest rate on deferred payments of priority tax claim under § 1129(a)(9)(C) of the Bankruptcy Code pursuant to Chapter 11 plan, but before concluding that § 6621 rate will provide government with present



NOTICE OF PLAN APPROVAL AND CONFIRMATION

To: Creditors and Stockholders of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, in Proceedings for Reorganization under Section 77 of the Bankruptcy Act.

On May 1, 1985 the Trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, filed with the United States District Court for the Northern District of Illinois, Eastern Division (the "Court") his 1985 Plan of Reorganization (the "Plan") for the Debtor. Hearings with respect to the confirmation and approval of the Plan were held by the Court on June 24, 25, 27, 1985 and on July 12, 1985. On July 12, 1985, the Court entered its Order No. 832 modifying the Plan and confirming and approving the Plan as modified. The Plan as modified is attached to this Notice.

Any inquiries with respect to the Plan as modified should be directed to the Trustee at the address indicated below.

By Direction of the Court

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and Pacific Railroad Company,  
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Dated: July 29, 1985